Supreme Court, U.S.
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No. _____

In The

Supreme Court of the United States

October Term, 1993

WES OUTDOOR ADVERTISING COMPANY,

Petitioner,

vs.

NEW JERSEY DEPARTMENT OF TRANSPORTATION,

Respondent.

Petition For A Writ Of Certiorari To The Supreme Court Of New Jersey

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Is the Petitioner deprived of property without Due Process when, following an evidentiary hearing, a state administrative agency issues an order requiring removal of Petitioner's permitted billboard, and that order is so contrary to the evidence presented as to be arbitrary and capricious?

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PETITION FOR WRIT OF CERTIORARI

Wes Outdoor Advertising Company petitions the Court for a Writ of Certiorari to review the judgment of the Supreme Court of New Jersey.

OPINIONS BELOW

The final decision of the Commissioner of Transportation adopting the Administrative Law Judge's Initial Decision is unpublished and is reprinted at App. 1. The Initial Decision of the Administrative Law Judge is unpublished and reprinted at App. 5. The *per curiam* opinion of the Superior Court of New Jersey, Appellate Division, affirming the Commissioner's Final Decision, is

unpublished and reprinted at App. 42. The opinion of the Supreme Court of New Jersey denying certiorari is reported at 134 N.J. 485, 634 A.2d 531 (1993), and is reprinted at App. 45. The order of the Superior Court of New Jersey, Appellate Division, denying reconsideration is unpublished and reprinted at App. 46. The order denying petition for rehearing by the Supreme Court of New Jersey is unpublished at this time and is reprinted at App. 48.

JURISDICTION

The Supreme Court of New Jersey entered judgment on September 23, 1993, and denied Petitioner's petition for rehearing on March 24, 1994. The jurisdiction of the court is invoked pursuant to 28 U.S.C. §1257. The question presented requires interpretation of the Due Process clause of the Fourteenth Amendment of the Constitution, which appears at App. 59.

STATEMENT

1. This Petition seeks review of a final decision by the New Jersey Commissioner of Transportation, which has been affirmed by the New Jersey Superior Court, Appellate Division, and denied certiorari by the State Supreme Court, by which Petitioner was directed to remove his roadside billboard.

At the heart of the controversy is a parcel of land, Lot #2 Block 226.01 in the City of Absecon, New Jersey, and

the permit which Petitioner sought and obtained from NJDOT, to construct a roadside billboard thereon. A billboard has been located on this parcel of land since at least 1938, before New Jersey even required permits for such signs. Prior to Petitioner's purchase of Lot #2 Block 226.01 from the City of Absecon on February 17, 1987, the billboards located there had been blown down in 1944, 1950, and 1962. According to the state's 1966 inventory of signs, the billboard then advertised the Mount Royal Motel, as it also did according to a 1969 field inspection report. The permit files were kept current through 1987.

2. Prior to 1958 the parcel was owned by Atlantic Outdoor Company, (Frank Gravatt) who in 1958 deeded it to his daughter Evelyn Ann Off and Frank S. Off who sold the land to Kend Company in 1959. Kend Company owned the land from 1959 until December 12, 1978.[1] On June 6, 1978, Hubert Lahn purchased all of Block 226.01 from Atlantic City Realty Company, except for Lot #2, the parcel now owned by Petitioner. As part of that sale, Atlantic City Realty also assigned to Lahn all of the sign permits which they held on Block 226.01, including the permit for Lot #2, which was not among the land parcels sold to Lahn. As a result, Lahn, (a principal in a partnership known as Fifty Acres Parcels 3 & 4) held a permit on Lot #2, which he did not own.

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[1] In 1978, the Township of Absecon retained ownership in Lot #2 Block 226.01 after foreclosing on a tax lien adjudged against Kend Company. The permit fees for Lot #2 Block 226.01 were maintained up-to-date by Fifty Acres from their application on June 6, 1978 until at least December 23, 1986. (App. 60).

3. When Petitioner initially applied for a permit for Lot #2 on July 3, 1986, title to Lot 2 was held by the City of Absecon which had acquired it through foreclosing a tax lien against the successor in interest to Kend Company. (App. 62). At that time, Petitioner's application identified the intended sign location by reference to existing pilings at utility pole #13369, but contained no measurement of distance from the Delilah Road overpass. NJDOT inspector Lloyd reviewed the application, and internally recommended denial because of the proposed sign's proximity to another licensed site, that of Fifty Acres Parcels 3 & 4 (application #47910). In reality, Petitioner's site was the site which actually corresponded to the permit held by Fifty Acres.

In denying the permit, NJDOT advised Petitioner that if he intended to place his sign on existing pilings, the permit for that location was held by Fifty Acres and an apparent conflict existed. Petitioner then sought to have Fifty Acres assign him the permit which it held on Lot #2, but found Fifty Acres only willing to sell the permit at a very high price. Petitioner declined to pay the Fifty Acres asking price.

4. On November 9, 1987, Petitioner appealed NJDOT's denial of his permit application #54171 and was granted an informal hearing in which he presented proof that the property to which the Fifty Acres permit related was his Lot #2 Block 226.01 and requested that he be issued a permit to replace the one held by Fifty Acres. Subsequently, John Nettleton, NJDOT's Supervisor of Outdoor Advertising, who was present at the informal hearing, provided Petitioner with new application and instructed him to complete it with the identification and

location information taken from the existing permit of Fifty Acres. Among the information taken from the Fifty Acres permit was the location measurement of 300 feet east of the Delilah Road overpass. Following Petitioner's submittal of application #55363, Inspector Lloyd again reviewed the application and recommended denial because of traffic and wetlands concerns. Both of the appropriate departments found the application to be acceptable.

On March 2, 1988, Petitioner's permit application #55363 was approved in a meeting with Nettleton and NJDOT Administrator Wilfred Echeverria who reviewed the facts and overruled Lloyd's recommendation of denial.

Petitioner then sought and obtained a zoning variance from the City of Absecon and the necessary building permits and began constructing a billboard on the site of the existing pilings on Lot #2.

5. During the course of construction Lloyd visited the site on several occasions and took photographs of the construction on three occasions. Neither Inspector Lloyd nor anyone with NJDOT advised Petitioner of any concerns over size or location, until May 9, 1989, after Nettleton retired from NJDOT, when, except for lighting, the construction was complete. William Norton, who replaced Nettleton as NJDOT Project Manager Bureau of Maintenance Support, wrote to advise Petitioner that the sign exceeded current size regulations. No mention of incorrect location was made until August 15, 1989, when Norton wrote to advise that the sign was not constructed

in the location specified in the permit, which was 300 feet of the Delilah Road overpass.

6. Petitioner requested a contested case/formal hearing which resulted in the order to remove the sign as being a size violation and a location violation.

7. Petitioner raised the issue of an arbitrary and capricious decision against undisputed evidence (Due Process violation) by taking 35 exceptions to the Initial Decision of the Administrative Law Judge. These exceptions present issues which, left uncorrected, amount to denial of procedure and substantive Due Process. Exception #5.1 states "[t]he ALJ's assertion that Bell knew, at the time he submitted his second application, that the place he wanted his sign was not 300 feet east of the overpass, is neither true nor supported in any way by the record."

Petitioner further raised the arbitrariness of the decision and the issue of nonconforming use in exception #33.1 which reads "Bell introduced evidence, which was not controverted, that the sign which was the subject of McWilliams, field report on location, P-11, was a sign that stood in 1969 on the same location as Bell's sign today."

The Commissioner of Transportation adopted the Administrative Law Judge's erroneous Findings of Fact and Conclusions of Law on August 9, 1991, without reference to the exceptions.

8. The Due Process issue was presented on page 54 of Petitioner's Brief and Appendix on Appeal from the Office of Administrative Law in the Superior Court of New Jersey, Appellate Division: "The Administrative Law

Judge's findings in "DISCUSSION OF TESTIMONY" are so incredible and in error in *"every single detail"* that her Findings of Fact are directly opposite to every single fact, document, photograph, deed, and record in evidence or introduced, to be placed into evidence." (emphasis in original).

The nonconforming use/Due Process issue is presented on page 6 of the Brief on Appeal from the Office of Administrative Law in the Superior Court of New Jersey, Appellate Division: "[t]his permit's history is, in fact, for a previously existing sign, on the exact same spot since 1938, on land which was purchased by Appellant, on September 11, 1986 at Public Sale."

The Superior Court of New Jersey, Appellate Division stated in a *per curiam* opinion that "The agency's findings and conclusions are supported by substantial evidence in the record" without reference to these assertions. (App. 43, *Per Curiam* opinion, p.2, March 31, 1993).

9. The Due Process issue was presented on page 4 of Petitioner's Brief in Support of Motion for Reconsideration. Petitioner states "The facts set forth below will show that this Court was mistaken to rely so heavily on the findings of Judge Dower-LaBastille which, in critical respects, are contradicted rather than supported by the record."

In Petitioner's Brief in Support of Motion for Reconsideration, Petitioner states in raising the issue of nonconforming use/Due Process that "The letter also noted that there had been a long history of signs erected on the

Property and provided several specific examples."[2] Petitioner also stated that "the secondary issue is whether Bell's billboard was constructed in accordance with applicable size regulations."

The Superior Court of New Jersey, Appellate Division denied reconsideration, without reference to these assertions.

10. The Due Process issue was raised before the New Jersey Supreme Court on Petition for Certiorari by inclusion of the briefs before the Appellate Division as part of the record on appeal and stated in the Certiorari Petition on page 1:

> More recently, this Court has recognized that State agencies have an implied duty of good faith and fair dealing and a "supervening obligation to deal scrupulously with the public." *W.V. Pangborne & Co. v. N.J.D.O.T,* 116 N.J. 543, (1989). The United States Supreme Court has also recognized the interest of citizens in a "minimum standard of decency, honor, and reliability in their dealings with government." *Heckler v. Community Health Services,* 467 U.S. 51, 61 (1984).

Petitioner preserves the issue of nonconforming use/ Due Process on page 68A of the Petition for Certification from the Final Judgment of the New Jersey Superior Court, Appellate Division by including the Brief in Support of Motion for Reconsideration in Petitioner's Appendix.

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[2] The letter referred to in the Brief in Support of Motion for Reconsideration is attached as Exhibit P-4a. (App. 66).

The Supreme Court of New Jersey denied certification without reference to these assertions.

8. In Petitioner's Petition for Rehearing for Petition of Certification in the Supreme Court of New Jersey, the issue of Due Process is presented on pages 1 and 6.

Petitioner states that "the Appellate Division Panel that heard the Appeal did no[t] [sic] properly review Appellant's Brief and Appendix and therefore did not fairly or Judiciously consider Bell's rights 'in the interest of equity and essential justice' under the laws of the State of New Jersey or the United States." (p.l). The Petitioner asserts on page 8 that:

> The ALJ based her decision solely on the Attorney Generals Unsupported positions and that Bell's witnesses, documents, photographs, and surveys were incredible or unreliable.
>
> The State never introduced an engineer or land surveyors to dispute Bell's experts and survey's and therefore the ALJ errored [sic] in disbelieving work of a N.J. Licensed Surveyor and their Engineers, when their testimony was undisputed.

The issue of nonconforming use/Due Process was raised on page 5:

> In the present case the Billboard existed since 1938, the State began Billboard regulation in 1942 and on April 30, 1969 a State Inspector (McWilliams) prepared an "Application in Lieu of Missing Application" in which the State Inspector located the existing Billboard at 300 ft East of Delihah Road Overpass.

The Supreme Court of New Jersey denied rehearing without reference to these assertions.

REASONS FOR GRANTING THE WRIT

This Petition seeks the Supreme Court's review of the process below through which NJDOT has ordered Petitioner to remove an existing sign which he erected on property owned by him, pursuant to a sign permit which was duly issued to him on March 2, 1988. In requiring Petitioner to remove his sign, NJDOT has deprived Petitioner of a vested property right without the procedural and substantive rights of Due Process to which he is entitled under the Fourteenth Amendment of the Constitution. The denial of Due Process is found in the initial decision of the Administrative Law Judge (ALJ) containing findings of fact and conclusions of law which are so inconsistent with uncontroverted evidence in the record as to be arbitrary and capricious, constituting a denial of Petitioner's right to Due Process. The ALJ's refusal to admit into evidence certain critical exhibits, contrary to the State's regulations applicable to the admission of evidence in New Jersey administrative tribunals, also contributed to the denial of Due Process.

Additionally, because the permit obtained by Petitioner was intended to allow reconstruction of a sign on the site of his property, which had existed as a permitted location since the enactment of New Jersey's sign law in 1942, NJDOT's removal order has deprived him of the right to maintain any commercial billboard on Lot #2, and also deprived him of the right to nonconforming use.

The initial decision rendered by ALJ LaBastille on May 13, 1991 (App. 5) presents her findings of fact and conclusions of law and orders removal of the sign. That decision contains findings and conclusions which are not merely unsupported by evidence, but contrary to evidence which is uncontroverted in the record. The failure of the ALJ to render a ruling which is supported by and consonant with undisputed evidence, but which results in ordering the removal of Petitioner's sign implicates the protections afforded by the Due Process Clause of the Fourteenth Amendment.

The right to Due Process is not limited to the right to notice and opportunity. Due Process is a dynamic and flexible concept not to be constrained by rigid definitions. Integral to the Due Process right to be heard is the government's duty to provide for fair decisionmaking. *Fuentes v. Shevin,* 407 U.S. 67 (1972). The right to fair decisionmaking embraces the right to a decision based on the record with a statement of reasons for the decision.[3] Procedural Due Process is denied, when, as here, a decision is rendered which is so disparate when compared with the evidentiary record, as to be arbitrary.

> The scope of review under the 'arbitrary and capricious' standard is narrow and a court is not to substitute its judgment for that of the agency. Nevertheless, the agency must examine the relevant data and articulate a satisfactory explanation for its action including a 'rational connection between the facts found and the choice made.'

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[3] J. Nowak et al., *Constitutional Law,* p. 371 (3d ed. 1986).

Motor Vehicle Mfrs. Assn. v. State Farm Mut., 463 U.S. 29, 43 (1983) (citing *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962)). *See also, Wood v. Conneaut Lake Park. Inc.*, 386 F.2d 121, 124 (3rd Cir. 1967).

Arbitrariness of the ALJ's order is reflected in its inconsistency with the evidentiary record. For purposes of this Petition, the degree of inconsistency between the order and the record requires a direct comparison of the order with the record. Supreme Court review of findings of fact by a state court is appropriate where a federal right has been denied as the result of a finding shown by the record to be without evidence to support it, or where a conclusion of law as to a federal right and findings of fact are so intermingled as to make it necessary, in order to pass upon the federal question, to analyze the facts. *United Gas Public Service Co. v. State of Texas*, 303 U.S. 123, 143 (1938). The view of the facts taken by courts below, though entitled to respect, does not bind the Supreme Court which may make an independent examination of the record. *Doremus v. Board of Education*, 342 U.S. 429 (1952). That the question is one of fact does not relieve "the duty to determine whether in truth a federal right has been denied. When a federal right has been specially set up and claimed in a state court, it is our province to inquire not merely whether it was denied in express terms but also whether it was denied in substance and effect." *Norris v. State of Alabama*, 294 U.S. 587, 589-590 (1935). "[T]he duty rests on this Court to decide for itself facts or constructions upon which federal constitutional issues rests." *Kern-Limerick, Inc. v. Scurlock*, 347 U.S. 110, 121 (1954).

The entire controversy herein derives from ALJ Labastille's failure to grasp that the location of Petitioner's sign (Lot #2 Block 226.01) is the identical location as had been used for billboards since 1938, and which had been permitted during much of that time pursuant to application #12194 (App. 63) in the name of Atlantic Outdoor Sign Company. When Fifty Acres Parcels 3 & 4 purchased the surrounding property in 1978, the seller transferred to Fifty Acres the billboard permits which it had held for Block 226.01, including permit application #12194.

Application #12194, which is referenced on the Fifty Acres application #47910 (App. 68) as its predecessor is located on the identical site as Petitioner's current permit at Lot #2 Block 226.01. (App. 69). Petitioner presented compelling evidence that his site and that of #12194 (Atlantic Outdoor) are identical, and that Fifty Acres, claim to the permit is based upon a dimension of 300 feet reflected on the application which also appears on a filed inspection report for #12194 "in lieu of missing application." (App. 63). This evidence was not controverted, but largely ignored by the ALJ, who in commenting upon the credibility of Petitioner's witnesses said "these witnesses told the truth, but faulty recollections can occur when witnesses address actions which occurred ten to 40 years ago." (App. 10-11). Significantly, Judge Labastille did recognize that "the testimony proved that Bell built his sign on the exact spot where another sign had existed for many years and that there were no other signs at the site during that period." (App. 11).

The ALJ unfortunately failed to follow the evidence offered by Petitioner which conclusively demonstrated

the identity of physical site between Petitioner's sign (Lot #2 Block 226.01) and the permitted signs which had existed on that same location in previous years. Instead, the ALJ seized upon the dimension of 300 feet east of the Delilah Road overpass, which appears as a location on a series of permits and applications, including not only that of Petitioner's second application, #55363 (App. 69), but also the Fifty Acres application #47910 and Atlantic Outdoor's application #12194. The ALJ concluded essentially that Fifty Acres owns the property at 300 feet east of the overpass; Fifty Acres held the permit for a location described as 300 feet east of the overpass; Atlantic Outdoor #12194 was a predecessor holder of the Fifty Acres permit; and Atlantic Outdoor's application reflects a location of 300 feet east of the overpass. The ALJ's reasoning and conclusions depend upon the reliability of the 300 foot dimension reflected on the Atlantic Outdoor and Fifty Acres permits which, as the record shows, was incorrect and not at all reliable. Both applications relate to the site of Atlantic Outdoor's #12194, which is the same physical location as Petitioner's sign. This is the fundamental mistake made by the ALJ, which led to her concluding that Petitioner had "represented falsely to DOT's Nettleton that his second application could be granted because he had bought the Fifty Acres site." (App. 13). While Petitioner did buy the property which the Fifty Acres permit actually corresponds with, he never did suggest or testify that he bought property from Fifty Acres.

A review of the record reveals conclusively that: (1) Petitioner's sign is located in the same location as the earlier sign advertising Mount Royal Motel, pursuant to

application #12194, and the same location as an even earlier sign advertising James Salt Water Taffy, as early as 1940; (2) the Fifty Acres permit is a successor to Atlantic Outdoor's application #12194, both of which recite location as 300 feet east of the Delilah Road overpass; (3) the 300 foot dimension of Atlantic Outdoor's application #12194 was placed on a field inspection form stamped "in lieu of missing application" in 1969 by NJDOT employee J.H. McWilliams; and (4) because the Fifty Acres permit is a successor to Atlantic Outdoor's application #12194, which actually corresponds to the site of Petitioner's sign, (which has been measured to be 460 to 478 feet from the overpass) the 300 foot dimension on the Fifty Acres permit is incorrect, and the permit actually relates to the site at 460 to 478 feet.

Atlantic Outdoor Sign Company, former holder of application #12194, was owned by Frank Gravatt, who until 1958 also owned Lot #2 Block 226.01. He also owned Parcels #3 and #4 which are now owned by Fifty Acres. (App. 60, 68). At the time in 1958 that Gravatt deeded Lot #2 to his daughter and son-in-law, the Offs, and for many years prior, there was a billboard on the location of Lot #2 advertising James Salt Water Taffy (App. 64) as early as 1938 (App. 65).

On August 18, 1959, the Offs entered into a contract for the sale of Lot #2 to the Kend Company, which included the billboard, advertising James Salt Water Taffy (App. 70). A letter from the realtor, H.G. Myers, to the purchaser of the lot discusses the purchaser's request that the "James" sign be turned over by February 1, 1960. (App. 75).

A May 7, 1940 aerial photograph by the U.S. Department of Agriculture (App. 58) reveals a billboard in the same location as Petitioner's sign is today. A second aerial photograph by the U.S. Department of Agriculture (App. 53) taken on May 3, 1957 demonstrates that there was only one billboard in the area at that time, and it was situated in the precise location of Petitioner's sign today.

Significantly, during the course of the hearing, Petitioner presented the testimony of Thomas Wood, Jr. a surveyor who supervised a survey of the site of the "James Saltwater Taffy" sign on July 21, 1959 (App. 85). Mr. Wood testified that the July 1959 survey reflected a billboard on the lot, 105 feet in length, and that his survey was basically the same as the Thomas survey (App. 86) and the Petitioner's property. (App. 87). Petitioner also presented the testimony of William J. Rafferty, an engineer who had studied and compared the Shilling survey (which had been performed for Fifty Acres in 1978) (App. 94), the Charles Thomas survey (which had been performed by Petitioner), the Thomas Wood survey, and five aerial photographs of the area taken by Petitioner in 1989. (App. 98). The essence of Rafferty's testimony is that the above documents were in substantial agreement that they all depicted the identical location which included the site of Petitioner's sign, and in particular, the aerial photographs (App. 97-98) showed that the billboard in the photographs is in the same location as that depicted on the Shilling survey. (App. 98). Significantly, the Shilling survey shows a billboard in an area (Lot #2) which was excluded from the transaction to Fifty Acres. That is the only billboard shown on the survey.

Petitioner also presented photographs taken on July 31, 1960 by John Sinclaire, professional photographer employed by the RC Maxwell Company to photograph billboards. One of these photos was of a Maxwell sign located on Route U.S. 30, $^{8}/_{10}$ of a mile west of Delilah Road, relating to a sign other than that in question. The significance of this photo and its blowup (App. 54) is that it demonstrates the identity of Petitioner's present sign location and that of Atlantic Outdoor, advertising Mount Royal Motel in 1960. (App. 54). There can be no doubt that Petitioner's sign is on the same location as the Atlantic Outdoor sign which advertised Mount Royal Motel and corresponds with Atlantic Outdoor's application #12194.

In addition, Petitioner presented a sight line drawing prepared by Pennoni Associates which reveals the telescopic line of sight visible to one traveling east on Route U.S. 30, demonstrating that the location of Petitioner's current billboard is the same as that of the Atlantic Outdoor #12194. (App. 106). Finally, a current aerial photograph reveals the Petitioner's current sign to be in the same line of sight as that depicted on the Pennoni Associates, drawing. (App. 53).

Petitioner also attempted, unsuccessfully, to have admitted into evidence pages from a New Jersey DOT sign inventory covering January through March 1966 (App. 107). The significance of this inventory is apparent because it reveals only one billboard in this five mile stretch of Route U.S. 30 owned by Atlantic Outdoor advertising the Mount Royal Motel. (App. 107).

This evidence permits but one conclusion: Petitioner's current billboard is situated in the same location as had been the Atlantic Outdoor billboard advertising the Mount Royal Motel, and the earlier billboard advertising James Salt Water Taffy. Additional corroboration is found in the testimony of Thomas Wood that, when the survey was performed in July 1959, the billboard advertised James Saltwater Taffy. (App. 88). According to the July 31, 1960 photos (App. 115) by John Sinclaire, the sign visible under the overpass advertised Mount Royal Motel, which coincides with the realtor's letter concerning the buyer's requested availability of the "James" sign by February 1, 1960. (App. 75).

The 1969 field report of Atlantic Outdoor's application #12194 (App. 63) and Fifty Acres Parcel 3 & 4 application #47910 (App. 68), each recite location as 300 feet east of the Delilah Road overpass. The Fifty Acres application reflects on its face that the application is a replacement for #12194 of Atlantic Outdoor Sign Company, Room 26, Boardwalk Arcade Building.

The field report relating to application #12194 is dated January 30, 1969, signed by J.H. McWilliams and is stamped on its face "IN LIEU OF MISSING APP." (App. 63). This report shows the Atlantic Outdoor sign as advertising Mount Royal Motel. A sketch of the location in the lower right hand corner shows a distance of 300 feet from Delilah Road overpass to the sign. According to the sketch, the location of the sign was drawn just east of the Delilah Road off ramp. Lloyd and Nettleton testified to the recognized unreliability of, and often incorrect, dimensions appearing in NJDOT permit applications. (App. 108-109, 110).

As a result of the Fifty Acres permit being a successor to the Atlantic Outdoor permit, and because the Atlantic Outdoor permit related to a sign demonstrably proven to be at the location of Petitioner's present sign, (which distance has been measured by NJDOT as 460 to 478 feet from the Delilah Road overpass), it must be concluded that the 300 foot dimension on the Fifty Acres permit is incorrect and the Fifty Acres application actually corresponds to the present location of Petitioner's sign and former location of the Atlantic Outdoor sign. Petitioner's present location is the same site where billboards had existed for many years previously, and where Atlantic Outdoor held application #12194 advertising Mount Royal Motel. Because this property (Lot #2 Block 226.01) is owned by Petitioner, the Fifty Acres application #47910 is incorrectly described its site location and is unreliable. The sign application #47910 in the name of Fifty Acres in fact corresponds to Petitioner's site (Lot #2 Block 226.01).

The undisputed evidence further shows that the Petitioner's location of Lot 2 Block 226.01 is a previously existing sign location with a non-conforming use of 1,125 sq. ft. (App. 60, 66, 112). New Jersey statutory law 40:55-48 provides in pertinent part that "any nonconforming use or structure existing at the time of the passage of an ordinance may be continued upon the lot. . . . " N.J.S.A. #40:55-48. Petitioner's right to continue his billboard as a successor to the nonconforming size and dimension of his predecessor, Atlantic Outdoor is strongly supported by case law of New Jersey.

"Nonconforming rights run with the land irrespective of change in ownership." *Urban v. Planning Bd. of Borough of Manasquan Monmouth County, N.J.*, 124 N.J. 651,

653, 592 A.2d 240, 242 (N.J. 1991). *See also,* N.J.S.A. 40:55D-68. "A non-conforming use is defined as a use which does not comply with present zoning provisions but which existed lawfully and was created in good faith prior to the enactment of the zoning provision." *Pennridge Dev. Enter. v. Volonik,* 624 A.2d 674, 675 (Pa. 1993). "A lawful nonconforming use is a vested property right which cannot be abrogated or destroyed unless it is a nuisance, or it is abandoned by the owner, or it is extinguished by eminent domain." *Pennbridge,* 624 A.2d 675.

The New Jersey Supreme Court has acknowledged that the duration of nonconforming uses may be limited by abandonment or discontinuance. *Camera v. Board of Adjustment,* 570 A.2d 1012, 1015 (N.J.Super.A.D. 1990). In zoning law, discontinuance is synonymous with abandonment. It connotes a voluntary, affirmative, completed act. *Camera,* at 1015. "[A] abandonment of a nonconforming use or structure requires the concurrence of two factors: one, an intention to abandon; and two, some overt act, or some failure to act, which carries a sufficient implication that the owner neither claims nor retains any interest in the subject matter of the abandonment." *Camera,* at 1015.

The location of Petitioner's land was a site of a permitted nonconforming use for the last fifty years. The evidence proves that the nonconforming use is the erection of a 1,125 sq. ft. billboard. (App. 68, 112). Consequently, Petitioner, who is the legal owner of the location, has a vested property right in the continuation of the nonconforming use as a matter of law.

Lack of abandonment is demonstrated by evidence of the up-to-date fee payments of one hundred and twenty-five dollars ($125.00) which shows that there was no voluntary, affirmative, completed acts upon which abandonment could be predicated to demonstrate implication that the owner neither claims nor retains any interest in the location. (App. 63, 68, 69, 112, 114).

This deprivation of Petitioner's right to continue the nonconforming use is also a violation of his right to Due Process since nonconforming rights run with the land irrespective of the changes in ownership. The legislative policy inherent in N.J.S.A. 40:55-48 is that "it protects a use or structure which pre-existed a change in zoning law from the effects of the new restrictions. To dictate otherwise would probably result in an unconstitutional deprivation of property without Due Process of law." *Krul v. Board of Adjustment of City of Bayonne,* 298 A.2d 308 (N.J.Super. L.D. 1972).

The decision by the state of New Jersey, acting through the NJDOT, with the subsequent imprimatur of its appellate division and supreme court, has wrongfully required Petitioner to remove a roadside billboard for which he had obtained a duly issued permit. The removal order also erased the benefit to which he was entitled as the owner of a nonconforming use. The NJDOT, the appellate division and state supreme court each refused to apply the equitable doctrine of estoppel with respect to Petitioner's justified and detrimental reliance upon Nettleton's instruction to identify the location of the second application as 300 feet from the Delilah Road overpass. ALJ LaBastille concluded that Petitioner had made misrepresentations to Nettleton concerning acquisition of the

Fifty Acres site at 300 feet from the overpass, and was therefore eligible to claim estoppel. The decision by the ALJ has wrought a terrible injustice upon Petitioner by requiring him to remove his sign based on her findings and conclusions. "Procedural Due Process rules are meant to protect persons not from the deprivation, but from the mistaken or unjustified deprivation of life, liberty, or property." *Carey v. Piphus*, 435 U.S. 247, 259 (1978). The effect of the lower decisions is a denial not only of Petitioner's right to procedural Due Process but also his right to substantive Due Process. "[T]he Due Process Clause of the Fourteenth Amendment not only accords procedural safeguards to protected interests, but likewise protects substantive aspects of liberty against impermissible governmental restrictions." *Harrah Independent School Dist. v. Martin*, 440 U.S. 194, 197 (1979), citing *Kelley v. Johnson*, 425 U.S. 238, 244 (1976).

CONCLUSION

The cumulative effect of ALJ LaBastille's disposition of this matter is the deprivation of Petitioner's billboard sign and a duly authorized permit to erect and maintain that sign. In a process, the decision of which was based largely on an apparent error by State Inspector McWilliams in site location information on permit application #12194 (Atlantic Outdoor) and #47910 (Fifty Acres), the determination was made that those permits are for a location which is 300 feet east of the Delilah Road overpass, when the evidence in the record irrefutably reveals the signs corresponding with the Atlantic Outdoor permit #12194 to be sited at Petitioner's location

which has been measured to be 460 to 478 feet east of the overpass. The ALJ's resolute adherence to the 300 foot dimension, to the complete disregard of evidence relating to continuity of signage at the present location results in factual determinations and legal conclusions which are manifestly wrong and unsupported by the evidence.

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June 22, 1994

STATE OF NEW JERSEY

DEPARTMENT OF TRANSPORTATION

NEW JERSEY DEPARTMENT OF TRANSPORTATION, Petitioner, v. WES OUTDOOR ADVERTISING COMPANY Respondent.	)	FINAL DECISION OAL DOCKET NO. TRP 9566-89

Jeffrey W. Gerber, Deputy Attorney General for petitioner (Robert J. Del Tufo, Attorney General of New Jersey, attorney)

Lewis H. Robertson, Esquire, for respondent (Evans, Osbourne & Kreizman, attorneys)

John F. Palladino, Esquire, for intervenor, Fifty Acres parcels 3 and 4 (Hankin, Sandson, Sandman & Cowhey, attorneys)

The New Jersey Department of Transportation (DOT) charged respondent Wes Outdoor Advertising Company (Respondent) with violating *N.J.A.C.* 16:41-8.6(a)5i by erecting an oversized sign. The Respondent was also charged with violating *N.J.A.C.* 16:41-8.6(a)5v in that the Respondent erected a sign at a location other than that on the permit and too close to another licensed location. On December 18, 1989, DOT, pursuant to *N.J.S.A.* 52:14B-1 *et seq.*, transmitted the matter to the Office of Administrative Law (OAL) for determination as a contested matter.

A prehearing conference was held on March 18, 1990 and hearings were held on July 10 and 11, August 5 and

December 4, 1990. Two parties filed briefs setting forth Proposed Findings of Fact and Conclusions of Law. On February 21, 1991 the record closed. Judge Naomi Dower-LaBastille filed her Initial Decision on May 13, 1991. Subsequently, exceptions were filed by two parties including cross-exceptions by the Attorney General's Office. I have received the Initial Decision in this matter as well as the testimony, exhibit, Proposed Findings of Fact and Conclusions of Law and the exceptions and cross-exceptions filed by the parties. Upon review I have determined that I will adopt the Administrative Law Judge's Findings of Fact, Conclusions of Law and recommended penalty for the reasons set forth in her Initial Decision.

FINDINGS OF FACT

I hereby adopt the fifty one (51) Findings of Fact made by the Administrative Law Judge.

EQUITABLE ESTOPPEL

I hereby adopt the conclusion reached by the Administrative Law Judge denying Respondent's claim that DOT is estopped from forcing him to remove his sign because it is at an unauthorized location. I also adopt the Administrative Law Judge's conclusion recognizing that there was agreement that the sign could exceed 60 feet in length. I emphasize, however, that the Respondent knew that the agreement carried with it the requirement that the sign conform with the maximum square footage limitation of 1,000. Respondent violated this agreement.

UNAUTHORIZED SITE AND DISTANCE VIOLATION

I hereby adopt the conclusion reached by the Administrative Law Judge that the Respondent violated his permit by building a sign at an unauthorized site which site is less than 300 feet from two authorized permit locations.

SPACING REQUIREMENTS AND PENALTY

I hereby adopt the Administrative Law Judge's conclusion that because of existing permits a permit cannot be issued for a sign 470 feet east of the Dililah Road overpass and that the appropriate penalty is removal of the sign and recovery of the cost.

SIZE AND NON-CONFORMITY

I hereby adopt the conclusion reached by the Administrative Law Judge that the sign constructed by the Respondent does not satisfy the requirements of *N.J.A.C.* 16:41-8.1 *et seq.* and, therefore, is not a non-conforming sign. Further, I adopt the Administrative Law Judge's conclusion that the Respondent intended from the beginning to construct a sign exceeding 1,000 square feet and that he did knowingly and deliberately construct a sign well above the agreed upon 1,000 square foot limitation, contrary to the law and to his agreement.

PENALTY

I hereby adopt the Administrative Law Judge's assumption that the rule on penalties is valid, and its application is not constitutionally offensive. I also adopt

the Administrative Law Judge's conclusion that the penalty in [sic] neither arbitrary nor excessive.

IT IS ON THIS 9th day of August 1991, ORDERED that Wes Outdoor Advertising Company shall remove or shall cause the removal of the sign within ten days of the Final Decision, and if Wes Outdoor Advertising Company does not do so, DOT may assess costs of removal and further ORDERED that Wes Outdoor Advertising Company shall pay a fine of $50 per day for the first 30 days, $100 for the next 30 days and $200 per day thereafter until removal of the sign, penalty to accrue beginning on December 6, 1989.

STATE OF NEW JERSEY
DEPARTMENT OF TRANSPORTATION

/s/ Tom Downs
THOMAS M. DOWNS
Commissioner of Transportation

App. 5

ORDERS AND STAY

Docket # A-6292-90T3

STATE OF NEW JERSEY

OFFICE OF ADMINISTRATIVE LAW

CN 049

Quakerbridge Plaza, Bldg #9

Trenton, New Jersey 08625

(609) 588-6584

A copy of the administrative law judge's decision is enclosed.

This decision was mailed to the parties on MAY 20, 1991.

STATE OF NEW JERSEY

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. TRP 9566-89

AGENCY DKT. NO. 89-523

NEW JERSEY DEPARTMENT OF TRANSPORTATION

Petitioner,

v.

WES OUTDOOR ADVERTISING COMPANY,

Respondent.

Jeffrey W. Gerber, Deputy Attorney General, for petitioner (Robert J. Del Tufo, Attorney General of New Jersey, attorney)

Lewis H. Robertson, Esq., for respondent (Evans, Osbourne & Kreizman, attorneys).

John F. Palladino, Esq., for intervenor, Fifty Acres Parcels 3 and 4 (Hankin, Sandson, Sandman & Cowhey, attorneys)

Record Closed: February 21, 1991

Decided: May 13, 1991

BEFORE **NAOMI DOWER-LABASTILLE, ALJ:**

On May, 9, 1989, the Department of Transportation (DOT) sent Wes Outdoor Advertising Company (respondent) a notice that its sign erected at U.S. Rt. 30, Absecon was in violation of *N.J.A.C.* 16:41-8.6(a)5i (oversize). On August 15, 1989, DOT advised that the sign also had been erected on the wrong location and must be removed. The Department of Environmental Protection, Division of Coastal Resources sent respondent a notice of violation (no. 0101-89-010) on the same date. On December 18,

1989, DOT transmitted the matter to the Office of Administrative Law (OAL) for determination as a contested case pursuant to *N.J.S.A.* 52:14F-1 *et seq.*

A prehearing conference was held on March 28, 1990 and the following issues were stated:

1. Is the sign in violation of *N.J.A.C.* 16:41-8.6(a)5i (size)?

2. Was the sign erected at a location other than that on the permit and too close to another licensed location? (*N.J.A.C.* 16:41-8.6(a)5v)

3. Was the sign constructed in coastal wetlands without a DEP permit and hence contrary to *N.J.A.C.* 16:41-8.4(a)14?

Defenses

4. Is the sign a nonconforming one under *M.J.A.C.* 16:41-8.6(a)9i?

5. Is DOT estopped from claiming wrong location?

6. Are DOT penalty regulations *prima facie* or as applied unconstitutional? (First, Fourth, 14th Amendments) (*N.J.A.C.* 16:41-8.16)

DOT sought penalties and removal. On April 11, 1990, Fifty Acres Parcels 3 and 4 (Fifty Acres) sought intervention on grounds it is the rightful owner of the permit no. 15516 granted for application no. 47910 under which respondent claimed rights. I granted intervention on May 3, 1990. Hearings were scheduled for July 10, 11 and 23, 1990.

On June 18, 1990, respondent filed a motion for dismissal on grounds that numerous departmental regulations were unconstitutional, among which was included the penalty regulation, *N.J.A.C.* 16:41-8.16. Respondent stated that the motion was to preserve its rights to make these arguments since I indicated at the prehearing that an ALJ acting within an agency jurisdiction has no authority to declare agency regulations unconstitutional. On June 20, 1990, I advised respondent that if a violation was found, I would address the application of the penalty regulation, *N.J.A.C.* 16:41-8.16, if necessary, and that the hearings would not be adjourned. Respondent stated that the identical constitutional issues were alleged in concurrently filed Superior Court litigation seeking an injunction and damages pursuant to 42 *U.S.C.* § 1988. I was advised that the court dismissed the civil rights claims and the matter is in the Appellate Division.

Hearings were held on July 10 and 11, 1990, but the parties were unable to conclude the hearings on July 23 and substituted August 15, 1990. Further hearing time was scheduled on October 5, 1990. Respondent's principal (Wesley Bell) attended and stated his counsel could not appear due to an emergent matter in the Superior Court. The hearings were concluded on December 4, 1990. Respondent's counsel requested more than 30 days to brief, due to a holiday vacation and subsequently requested an extension of the January 31, 1991 due date to February 7, so that he could review all transcripts. DOT filed its responsive brief on February 21, 1991, whereupon the record closed. (Due to my absence on vacation during the writing period an extension of time

for decision was granted.) A list of exhibits is appended to this decision. The transcripts are designated as follows:

1T July 10, 1990

2T July 11, 1990

3T August 5, 1990

4T December 4, 1990

The issue of a DEP violation is no longer in the case. The Attorney General represented on the first day of hearing that DEP no longer considered respondent's sign in violation of DEP regulations.

Discussion of Testimony

In the findings proposed by the parties, each points to reasons why particular witnesses should be found incredible or unreliable. I will therefore address the credibility issue here, rather than recounting all the testimony, because depending upon one's view of the case, much of the lengthy and complicated fact testimony of respondent's witnesses may be true, but not material. The testimony may have a bearing on credibility, but only on that issue, and therefore will not appear in the operative findings of fact below.

DOT's principal witness was William A. Norton, project engineer and administrator of the Outdoor Advertising Section. Norton has worked in this field for many years and his intelligence, knowledge of the field, and candid demeanor inspired confidence. Norton's subordinate Richard C. Lloyd, was solidly experienced in his work, and candid, but, as is to be expected, his expertise

was of a different level than that of Norton. Lloyd is a field investigator, not an engineer. To the extent that this made him less credible in areas of expertise, such as measurements, it made his *work* somewhat less credible than that of Norton, but he himself was completely believable. Intervenor Fifty Acres produced its principal, Herbert Lahn, whose testimony buttressed DOT's case. He was fully credible. Lahn testified that on March 29, 1978, Fifty Acres purchased land surrounding Lot 2 Block 226.01 in Absecon from Atlantic Realty Company (Atlantic) but would not buy Lot 2 (currently owned by Wesley Bell) because Chelsea Title Company reported that the seller did not have good title. The purchase included all signs (appurtenances) on the property including a "James' sign" which was adjusted outside settlement. In 1987, shortly after Bell purchased Lot 2, he claimed Lahn's partnership held a permit to a sign on his property and asked Lahn to turn it over so that Bell could maintain a 1125 sq. foot sign, which exceeded current DOT size limits. Lahn refused. In 1978, Fifty Acres had obtained a permit for a sign 300 ft. E. of Delilah Rd. overpass on Rt. U.S. 30 replacing the permit held by Atlantic. (Application 47910 replacing 12194; P-9). Bell claimed he had a right to this permit.

There was no genuine credibility issue concerning the witnesses respondent engaged to perform various tasks in proving his case such as engineer William Rafferty, his employee Mark Conover, surveyor Thomas Wood, photographer John C. Sinclair, surveyor Glen McAllister, attorney Glenn Gronland, and sign company employee Williams Somers. These witnesses told the truth, but faulty recollections can occur when witnesses

address actions which occurred ten to 40 years ago. As for the opinions of experts, they are only as good as the facts or theories which form the basis for opinions. Many of the connections were tenuous and based on documents lacking crucial data such as designation of distance from a fixed monument or other clearly identifiable land marker. Finally, even if believed and given full weight under Bell's theory, the testimony proved that Bell built a sign on the exact spot where another sign had existed for many years and that there were no other signs at the site during that period. Bell believes that these facts prove the case. In my view, they are simply a part of his theory.

William Nettleton worked for DOT for 30 years prior to his retirement in 1989, which was forced by threat of disciplinary action. Nettleton was a supervisor in the outdoor advertising section. Nettleton carried on a more loose practice than Norton. He did not resolve all inconsistencies. He approved a Bell application based on the applicant's representations and contrary to Lloyd's recommendation. Nettleton was fairly credible, however, although not nearly so credible as Norton. On certain significant points, his testimony was not really favorable to Bell. For example, he stated that the location on a sign permit was "a legal description assuming [it came from] an existing permit" [3T117:15], and stated several times that he approved Bell's sign because Bell stated he had purchased the site from Fifty Acres. Bell never testified that he had *not* made this representation to Nettleton.

Wesley Bell is the alter ego of Wes Outdoor Advertising, Inc. He has been in the sign business for decades. He is fully aware of DOT advertising regulations and the way in which DOT interprets them. He espouses his own

interpretations. He feels that DOT, particularly Norton, is harassing him. Bell is not capable of accepting refusals. Setbacks become a spring board for new theories or tactics. Bell is absolutely sure he is right on each occasion and if the facts show otherwise, he ignores the inconsistency. His attitude is that his business interests succeed all other concerns. Billboards in and near Atlantic City are highly lucrative because of the casinos in recent years. Bell's testimony was unreliable. Bell does not intentionally lie: he simply believes fervently that the "facts" and law are as he wishes them to be.

In addition to Bell's demeanor throughout a lengthy hearing, various parts of the testimony support my above observations and conclusions that in several principal respects, Bell was not credible. For example, he initially told DOT that there had been no sign on the site he applied for since 1960. Subsequently he claimed rights to a 1125 sq-ft existing non-conforming sign permit because there were pilings where he wanted to place his sign. (He replaced the pilings). In 1989, he stated that the sign on "his" site had advertised James Saltwater Taffy. At hearing, he tried to prove the sign had advertised the Mount Royal Motel. When Bell made his initial application for a permit, he admitted the owner of the lot was the City of Absecon and he did not claim he was leasing from the City. The application was for a sign 60 feet long. This was inconsistent with his subsequent theory of non-conforming use for an 1,125 square foot sign. Bell knew exactly where he wanted to place a sign, for, as testimony showed, it was the spot with the best visibility. His interest in the site was so strong that he eventually proceeded with only a quit claim deed to the lot.

When Bell's first application was denied because it was too close to the Fifty Acres and Resorts permits, he tried to obtain the Fifty Acres permit for a location 300 ft. from the overpass by claiming the site was on his land. (At hearing, measurements by Norton clearly showed that the 300 feet location was on Fifty Acres land.) When Lahn, of Fifty Acres, refused to give up the permit except for a price, Bell demanded that DOT revoke the Fifty Acres permit. He then represented falsely to DOT's Nettleton that his second application could be granted because he had bought the Fifty Acres site. Based on Bell's representation, Nettleton told Bell to mark his application as a replacement of the former Atlantic and Fifty Acres permits. As a replacement, the permit was required to use the same legal description (300 ft. E. of the Delilah Road overpass). At the time, Bell knew that the place he wanted his sign was *not* 300 ft. E., but significantly further to the east. He kept silent on that point and when he testified, he claimed that he did not know this until after the sign was built. Notwithstanding Nettleton's acceptance of Bell's representations, Nettleton did demand that Bell agree to a more conforming size (1,000 sq. ft.) for his sign to obtain a permit, because no sign had existed on the site, by Bell's admission, since the 1960s. Although Bell agreed "to accept" a permit for 1,000 (100x10) square feet, he built one exceeding that size although he was aware of the current regulations mandating the method of measurement and, if in doubt, could easily have asked DOT. At hearing, Bell's theory was that old Treasury regulations applied to measurements. He admitted that he never measured 300 feet to determine the location on the permit. He claimed that as much as a

hundred feet off the legal description was considered acceptable.

With full knowledge of the facts and regulations, and 40 years experience in the business, Bell then constructed a sign, not on the authorized permit location (300 feet east) but about 170 feet further to the east. (300 feet E. was not as good a location for visibility). Bell's final theory was that, despite his own knowing conduct, DOT is estopped to enforce its regulations by requiring removal, because he *relied* on the permit (for size and *his* location, not the 300 ft. E. location on the permit) and because DOT did not stop him from constructing the billboard. DOT would never have realized that Bell's sign was significantly distant from the 300 ft. location authorized if it had not been for Bell's appeal and filing of litigation concerning billboard size. All of the above history of Bell's conduct amply displays his characteristics and intentions and most of it is revealed in uncontroverted testimony or admissions.

Findings of Fact

1. On July 27, 1959, Atlantic City Realty Co. (Frank Gravatt) deeded a lot (lot 2) on Absecon Boulevard in Absecon to Evelyn Off (R-38).

2. In August 1959 Evelyn Off made an agreement to sell lot 2 and another lot with a Shelburne sign on it to Kend Co., Inc. (Max Malamut) who was also an owner of the Shelburne Hotel. The lot 2 description specifically stated it was subject to an existing lease with James Candy Company for an annual rental of $1,890.

3. In October 1959, Atlantic City Realty Co. leased to James Candy Company a 16 by 96 foot sign, about 3/10 of a mile (1584 feet) east of Jonathan's Thorofare facing traffic coming to Atlantic City for $2,400 per year to commence February 1, 1960, with an option to purchase for a period of two years (R-35).

4. On February 29, 1960, Kend Co., Inc. took title to lot 2, which was described in the deed as beginning 95 feet SW from the center line of Absecon Boulevard (measured radial thereto) and 8,581.79 feet W from the SW corner of the concrete slab of the State Highway bridge over Newfound Thorofare. Title was insured by Chelsea Title and Guaranty Company, with exception for "tenure of present occupants." Kend Co., Inc., became National Inns., Ltd in 1968 (R-36, R-37).

5. Lot 2, Block 226.01, bearing the same deed description as Lot 2 described above, was purchased by Wesley Bell from the City of Absecon in a tax sale and included in that sale by Bell's request. He took title by quit claim deed on February 17, 1987 upon payment of $3,000 (R-40). Bell did not have a survey made until September 1987 (P-48).

6. DOT approved application no. 20481 for a 1,125 sq. ft. sign one tenth mile [528 feet] East of the Delilah Road overpass at *pole 3892* on Route 30 in Absecon in 1959, which permit was replaced by application no. 5542 held by Abel Holding Co. (Steel Pier) in 1960. In 1968, Abel held permit no. 5636. The Abel permit was last renewed in 1970 and lapsed (P-11, P-12). Abel also had a permit for a sign two tenths of a mile E. at pole 3888 (R-1c).

7. In January 1969, DOT approved application no. 12194 of Atlantic Outdoor Sign Company for a 1,125 sq. ft. sign on U.S. Rt. 30 in Absecon which was 300

ft East of the Delilah Road overpass. The application identified the advertiser at the time as the Mount Royal Motel. The sign was oriented toward the eastbound offramp of Delilah Road close to its intersection with Route 30 and the sign about 300 feet further to the East was identified as permit no. 5636, application 5542 (Abel) (P-14). A Mount Royal Motel sign existed as early as July 31, 1960, however (3T9 Sinclair photograph), but it was deliberately removed some years ago (3T101).

8. On May 18, 1979, by application no. 49046, Resorts International obtained a permit for a 920 sq. ft. sign on Rt. 30 600 ft. E. of Delilah Road overpass. Permits for this site are current to date (P-13). The grant of this permit meant that no sign existed within about 300 feet, since one would have been visible on inspection.

9. On *March 30, 1978*, Fifty Acres parcels 3 and 4, a partnership, had purchased for $350,000, several lots in Absecon in block 226.01, including lot numbers 1 through 10, with the exception of lot 2, from Atlantic City Realty Company, including all appurtanences on the lots. On the settlement sheet, a "James sign" was specifically noted (P-17 and 18). Fifty Acres did not buy lot 2, because a Chelsea Title Company search indicated the seller did not have good title to it. The Fifty Acres purchase surrounds lot 2 and includes the land 300 ft. E. of Delilah Road overpass (P-7).

10. In May 1978, Fifty Acres made application (no. 47910) to DOT for a 1,125 sq. ft. billboard on Rt. 30, 300 ft E. of Delilah Road overpass, replacing the prior Atlantic Outdoor Advertising Company permit and application no. 12194 (which originally advertized [sic] the Mt. Royal Motel). The permit was

granted on June 7, 1978 and has been renewed each year to date (P-9, P-10).

11. Wes Outdoor Advertising Company, by its owner, Wesley Bell made application (no. 54171) to DOT on July 3, 1986 for a 60x16 foot sign on "an existing piling" near pole no. 13369 on U.S. Rt. 30 near the Delilah Road overpass on land owned by the City of Absecon (P-1). He did not have written permission from the City (4T114-115).

12. Wesley Bell has had his own outdoor advertising business for 33 years and worked with his father in that business since 1944. He is thoroughly familiar with the South Jersey area, including Absecon, Atlantic City and the Delilah Road overpass (4T4:5 to 9). Bell is also thoroughly familiar with the billboard regulations and the penalties for violation because of his hands on daily experience.

13. DOT inspector, Richard Lloyd was assigned to prepare a location report on Bell's application no. 54171. At the site, there was no stake marking Bell's proposed location and there were pilings both East and West of pole no. 13369, which he found to be about 390 feet from the overpass. Lloyd noted that permit no. 47910 (Fifty Acres) had a permitted site 300 ft. and no. 49056 (Resorts) had a permitted site 600 ft. from the overpass (P-20; 2T39-15 to 23; 2T208-15 to 18; 2T209-13 to 23; 2T214-20 to 25).

14. On his drawing, Lloyd erroneously referenced the Fifty Acres permit site as no. 54171 (Bell's application) and the site by the pole as no. 47910 (Fifty Acres permit), but this was immaterial to his denial recommendation, which was based partly on the fact that Bell's proposal site was less than 300 feet from a licensed location (P-20; 2T200-4 to 14; 2T40-21 to 42). Both Bell's and the Fifty Acres site

on Lloyd's drawing appeared close to the 300 ft. East of Delilah overpass description.

15. Lloyd's supervisor, John Nettleton, reviewed the report. Neither man recalled having any information concerning location from Bell except for the telephone pole number. Nettleton directed denial of his application on July 25, 1986 (4T114 to 115; 2T83-8 to 14; 4T118-13 to 23).

16. On December 23, 1986, Nettleton advised Bell: "If you are proposing to place your sign on existing pilings, they would *most likely be* on the site of [the Fifty Acres] permit. Since Fifty Acres parcels maintains their permits up to date, we see this as a conflict with your proposal. If you bought this parcel from the City of Absecon, they are obligated to advise . . . you, as purchaser, and Fifty Acres Parcels, as leasee under contract. We must therefore deny your application . . . until such time as you can resolve this problem" (emphasis added). Nettleton enclosed a copy of the Fifty Acres application (3T119; P-2).

17. On February 23, 1987, Bell wrote to Lahn Real Estate (Lahn is a partner of Fifty Acres) stating that the Fifty Acres permit was on his property. He asked Lahn to assign the permit to him so that he could claim the benefit of a 1,125 sq. foot size and avoid the current regulatory limit of 1,000 square feet (P-19). Lahn refused. He subsequently offered to sell the permit for $20,000 according to Bell.

18. Since the Fifty Acres permit was for a billboard 300 ft. E. of the overpass, Bell knew he would have to prove that *he* owned (or leased) the land at that location in order to obtain the permit. This was true because no permits were obtainable for any site between 300 and 600 feet from the overpass due to the regulations mandating a 300 ft. distance

between signs and Resorts had a permit for a 600 ft. location (P-9, P-13, *N.J.A.C.* 16:41-8.6(a)5v; 1T20 and 21; and inferences).

19. On or about November 9, 1987, Bell went to see DOT supervisor Nettleton, bringing a letter (P-4A), his new survey (P-4B) and a copy of an old photograph (allegedly from 1938) of the James Saltwater Taffy sign (P-4C). He asked Nettleton to revoke the Fifty Acres permit claiming it was for the location of the James sign pilings shown on his survey and grant him a permit for his pending application on the same site of the existing permit.

20. Nettleton interpreted the letter to mean that Bell had purchased the property and Fifty Acres refused to give him the permit which was for that site shown (the pilings) on Bell's land. Bell subsequently represented to him orally, when they met, that he had purchased the land (3T163, 183, 185, 192).

21. Nettleton therefore directed Bell that to obtain a permit replacing the Fifty Acres permit, he should fill in the description on the application indicating the replaced applications, which he did. The legal description of the location was 300 ft. E. of Delilah Road overpass (3T120; P-3). Although Bell had a survey of his land done to seek the permit, he did not have his surveyor make even a rough estimate of the distance from the overpass (4T119:21).

22. On November 16, 1987, Lloyd made an inspection report on the new application; he revised and filed his sketch on November 19, 1987. No stake identifying the site as Bell's was present either on November 16 or on November 22 when he rechecked the site. There were various old pilings visible including some in the 300 ft. E. area. Lloyd recommended denial for a number of reasons: Bell's site measured

about 460 ft. E. of the overpass and was too close to the Resorts permit; it was oversized (over 60 ft. long and over 1,100 sq. ft.); the land was zoned conservation and recreation; the land was wetland, requiring CAFRA and DEP review; and the sign was close to an intersection, requiring a traffic safety report. On November 19, 1987, Nettleton initialed "Deny" (R-24; 1T42-47; P-21, 1T48).

23. No letter of denial is of record, however. Bell again contacted Nettleton, making the same representations as before as to ownership of the land at the Fifty Acres permit site and submitted new "proofs" (R-42). To vitiate the oversize issue, however, Bell agreed to amend his application to limit sign size to 1,000 sq. ft. (100x10). Nettleton overrode Lloyd's recommendation to deny because, although he knew there was a conflict of distance he rationalized that perhaps the legal description was not accurately recorded or the measurement was wrong and believed Bell had a right to the permit because of his representation that he bought the site of the permit (3T191; 3T185; R-24 Note). Lloyd was never told Bell had allegedly bought the site from Fifty Acres.

24. On March 7, 1988, Nettleton approved Bell's application no. 55363 replacing the Fifty Acres permit for a site 300 ft. E. of Delilah Road overpass. Bell had never submitted a copy of a permit or a release from DEP, which he was required to include with his application, however (P-5; 1T22-23). Instead, Bell asserted that he did not need a DEP permit or release (R-42). He also needed a use variance from Absecon because his lot was zoned conservation (R-46).

25. In April 1988, Lloyd first learned of the permit Nettleton issued and was greatly disturbed because

it bore the 300 ft. location, which was inconsistent with his reports (R-27; 2T51). The Fifty Acres permit had been issued for 1988 and had not been revoked. In April 1988, John Nettleton was removed from his responsibility for implementing DOT outdoor advertising regulations (3T111). Lloyd still reported through him (2T53). William Norton became administrator of the section in May 1988) (1T65:22).

26. In November 1988, Lloyd gave Nettleton a notice for Norton that site work had begun at a location 460 ft. E. of the Delilah Road overpass whereas Nettleton had overruled his initial denial and issued a permit for 300 ft. E. He complained that the site work was within 300 ft. of another licensed location. He advised that two 1988 permits existed for the same location (300 ft. E.) and he wanted another inspector to witness the measurements (P-23). Norton did not receive the report and was never made aware that the site work was not at the authorized location. Bell replaced the pilings at "his site" with new ones.

27. In January 1989 Lloyd reported that the framework of Bell's sign looked "very big" (P-23 attachment marked 1/4/89). Norton told him to keep tabs on it and if it was erected contrary to existing regulations, (60 feet in length limit) he should issue a size violation (1T271).

28. On February 23, 1989, Lloyd measured the sign to be 86 feet by 11 feet high or 946 square feet (2T57-58). (At the time, he was aware a use variance was required, but did not know it was for a sign 11x80 feet, not to exceed 1000 sq. ft (R-46, page)).

29. Lloyd issued a size violation on May 9, 1989 (1T22:17-20). At an informal hearing on June 23,

1989, Bell argued that his sign was a non-conforming sign, and under the permits he took over (Fifty Acres) he had a right to build one with 1125 square feet, even though he admitted no sign existed on the premises since 1962 and although he agreed to a 1000 sq. foot sign in order to get Nettleton to issue the replacement permit (P-5; 1T22-24).

30. Norton advised Bell of the results of the hearing on July 10, 1989, stating his sign was not non-conforming and he was in violation as to both square footage (more than 1,000 sq. ft.) and dimensions (more than 60ft. long) (P-5). Norton also advised that DEP claimed a violation of the 1970 Wetlands Act. DOT gave notice of permit revocation within 30 days and penalty for each day the sign displayed advertising. No penalty is assessed if a sign remains blank (P-5).

31. At the time he wrote to Bell, Norton was unaware that Bell's sign had not been constructed 300 ft. E. of Delilah Road overpass, nor was he aware that Bell had not purchased the rights to the permit from Fifty Acres as he represented to Nettleton, and as he indicated on his application. DOT relies on the permit description and on the permit holder's building on the authorized site (1T26:15-22).

32. In late July or early August 1989, Bell filed suit against DOT in the Superior Court, seeking to void the sign regulations and for other relief. As a result of that action, Norton and his inspectors researched the exact location of Bell's sign and the other permits nearby (2T28). At the time the DOT survey crew visited the site the sign was fully constructed. The sign cost about $40,000 to build. (Bell claimed $63,000 at trial but admitted to citing $20,000 on his Absecon Construction permit and $50,000 for actual

construction (4T56). I do not include the cost of land, surveys or litigation in cost.

33. Norton, a civil engineer, personally "wheeled off" the location, measuring it in accordance with *N.J.A.C.* 16:41-8.6a(6). Bell's sign is located 478 ft. E. of the Delilah Road overpass, which is approximately 170 feet from the Fifty Acres permit (1T32:15 to 34:4).

34. Norton also obtained a tax map before he measured the site to assure himself of the location of Bell's lot (Block 226.01, lot 2) with respect to the land and permit of Fifty Acres and the site Bell's sign occupied. He had DOT's records searched and found no permit application had ever been made for a sign located on Lot 2 Block 226.01 at any time (1T29 to 31).

35. As a result of his research, Norton wrote to Bell on August 15, 1989 and stated that he had located his sign 478 ft. E. of Delilah Road overpass, the location specified on his permit and that the only way to correct his violation was to remove the sign (P-6).

36. At the time Norton researched the site, he also "wheeled off" the 300 ft. location, and with reference to the highway survey and tax map, he determined that Fifty Acres does indeed own the location about 300 ft. E. of Delilah Road and, in fact, there were existing pilings near the 300 ft. mark which were consistent with the Fifty Acres permit location. Norton related the locations of the Bell sign and Fifty Acres permit to a James Saltwater Taffy sign on an old photograph supplied by Bell (P-14; 1T29-35).

37. Although there are numerous pilings in the area (1T56-61; P-16 video) precluding certitude, Bell's sign is placed closest to the location of the old

James sign as shown in exhibit P-14 (date unknown, but 1950s vehicles shown) and R-31F (1957) but no DOT permit ever existed for the location (450 to 500 feet from the overpass) (2T150-178; 3T43; P-56, R-57).

38. Two aerial photographs made almost 20 years apart show five billboard sites. To the east of lot 1 (Fifty Acres), beyond the stream can be seen the largest of all (Steel Pier, per P-14) and a smaller one. To the west of the stream, the 1940 aerial (R-56) shows three sign locations and only the central one of the three remains in the 1957 aerial. The central one is on Bell's site. It can be located by reference to the straight drainage ditches on R-56, R-31F and R-28. On the 1940 photo, the signs are almost parallel to the ditches. On the 1957 photo, the central sign has been reoriented: it is no longer parallel to the ditches. Thus the Schilling 1978 survey showed the sign on Lot 2 in a slightly different location then it is oriented today on Bell's survey.

39. By 1957, a sign behind and to the east of the one on lot 2 was gone. It would have been between the first two drainage ditches off the southeastern corner of Lot 2 in Lot 1, which surrounded Lot 2. It would have been between pole 3892 and 3893 (R-28). The other sign missing on the 1957 aerial, by reference to the drainage ditches, was to the west of Lot 2, a relatively short distance away near where Norton placed in on P-14. It would be on a line with the Absecon Boulevard yield sign (P-28) and thus not more than 200 feet to the west of the sign on Lot 2 by the scale measurement of P-28. (Reference was also made to the configuration of the intersection on the aerials).

40. By 1959-61, there was a James Candy ad on a sign close to the current location of Bell's sign on lot 2

(R-33, 34, 35, aerial photos, P-14, finding above). Due to the angle of the photograph and roads, it is not possible to tell how close the sign was to where Bell's sign is now on P-14.

41. In 1940, the sign just east of the James sign location would have been closest to the permit location of Abel according to the pole identification (*see*, Point 6), between the two drainage ditches to the east of the James sign. The third sign, which disappeared between 1940 and 1957, is close to the 300 foot East location (the Fifty Acres permit) as marked by Norton on P-14).

42. By July 31, 1960, a Mount Royal Motel ad had been placed on a sign between 400 and 500 feet East of the overpass on or close to Bell's current site. It could be clearly seen through the overpass; Bell's sign can be seen through the overpass today.[1]

43. A very serious storm in March 1962 blew down the signs in the area and some were not replaced. Pilings remained. Pilings also remained from a 1944 storm (3T42-45; R-46; P-10). The sign at or near the Bell site was actually taken down by workmen, however, at some time between 1960 and 1979. (When the Resorts permit was granted.)

44. DOT permits were renewed for a site 1/10 mile E. (528 ft.) from 1959 to 1970 (Abel) and for the site

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[1] There is no survey documenting the Mount Royal sign as such or locating it with reference to a pole. Since the sign was put up by Atlantic Realty, which owned Lot 1, it is likely that the owner would have tried to place it on his land, and not the land his related principals sold to another (*i.e.* on Lot 2). Testimony indicated that there was only one sign at or near the site between 1960 and 1979, and that illegal placement of signs was not uncommon (3T108-109).

300 ft. E. of the overpass after 1969 (Atlantic/Fifty Acres). Thus a permit was not legally available to replace the sign or signs formerly located between the authorized permit sites (the area 300 to 600 ft. E. of the overpass). This would include either the James and Mt. Royal sign or signs if they were within the 400 to 500 ft. range E. from the overpass and would be true regardless of whether or not the James and Mt. Royal signs were on the same sign pilings. This fact is probably one reason why a sign was not replaced on the site and one reason why lot 2 was allowed to fall into a tax sale. (Inferences from facts found above).

45. Bell's sign is a rectangle (10.5 by 87 feet) with another, smaller half rectangle protruding from the top right three feet. DOT bases fees on the advertising surface, calculating the square footage of the smallest rectangle which encloses the entire advertising surface. By this method of measurement, Norton's calculation resulted in a measurement of about 1175 square feet (13"5'x87') [sic] (1T36:8 to 37:12; P-8).

46. Bell measured only the square footage of the billboard area upon which advertising was placed, excluding all borders to the advertising display and the base, resulting in a measurement of 85.77 feet in length and an average of 10.85 feet in height. The total square footage is 988 (R-47; 3T69). Bell alleged that old Treasury regulations provided for the method of measurement he used.

47. In August or September, Bell's sign was complete and he placed a political advertisement on his billboard. DOT did not advise Bell of penalties at this time because DOT does not regulate non commercial speech (1T62-63).

48. Bell contracted with Showboat Hotel and Casino to display its advertising from November 15, 1989 for one year at a yearly rental of $72,000 at the rate of $6,000 per month. The contract specifies that the billboard space is 10 1/2 by 85 1/2 ft., with panel extending 4 feet above the main billboard (R-65). Bell placed commercial advertising on the billboard on December 6, 1989.

49. On December 11, 1989, DOT gave written notice to Bell that DOT observed the sign being painted with advertising on December 6, and that effective on that date, penalty would run at $200 per day until the sign was removed or penalty corrected (R-14). Bell had previously received a formal penalty notice specifying penalty would accrue at $50 per day for the first 30 days; $100 for the second 30 days and $200 per day subsequently until removal of the sign or violation. By the July 10, 1990 hearing date, the penalty had reached about $32,000 (1T63). At $200 per day for 365 days the amount of penalty would be almost equal to the revenue from the sign ($73,000).

50. Pilings still exist 300 ft. E. of Delilah Road overpass, where Fifty Acres has a DOT authorized location.

51. Bell's sign and the unbuilt permits are in an area where there are no business buildings or houses less than 200 feet apart for one quarter mile or more (P-16).

Conclusion and Disposition

Equitable Estoppel

Respondent claims that DOT is estopped to enforce violations against him, specifically, to force him to remove his sign because it is at a location other than the

one authorized (300 feet) and too close to other licensed locations. Estoppel occurs if the State's conduct amounted to a misrepresentation or concealment of material facts known to it and unknown to respondent; if the State had the intention or expectation that respondent would act based on the State's conduct, and if respondent did in fact rely on the conduct to such extent that he changed his position for the worse. *Carlson v. Masters, Mates, Pilots Pension Plan Trust*, 80 *N.J.* 334, 339 (1979). Carlson also teaches that estoppel may arise by silence or omission where one is under a duty to speak or act. Id., 341. A seminal question is whether or not DOT acted in such a manner as to make it unjust to allow the State to penalize respondent.

The reliance by the party claiming estoppel must be reasonable and justifiable. *N.J. Bank v. Palladino*, 46 *N.J. Super* 6, 13 (App. Div. 1976). As to governmental entities, equitable estoppel is cautiously and rarely evoked. *O'Malley v. DOE*, 109 *N.J.* 309 (1987). Nevertheless, it is invoked against a governmental entity to prevent manifest injustice. *W.V. Pangborne & Co., Inc. v. NJDOT*, 116 *N.J.* 543 (1989). Respondent cites *Tremarco Corporation v. Garzio*, 32 *N.J.* 448 (1960), precluding revocation of a permit after reliance by a purchase of property and expenditure of monies in preparation for construction and two other cases precluding revocation of permits after reliance.

Before Bell took title to lot 2, DOT denied a sign permit for the site because it was too close to other permitted locations, particularly Fifty Acres 300 feet E. permit. Nettleton told Bell in December 1986 his proposal conflicted with the Fifty Acres permit. Bell knew on

exactly what pilings he wanted to place his sign. DOT did not. Bell took title on February 17, 1987, despite the permit denial. Because of his lengthy experience, Bell was well aware that he could never get a permit legally for a site 470 feet E. of the overpass, because an unbuilt site was authorized at 300 feet East. (Nettleton sent him a copy of the Fifty Acres authorization in December 1986). That did not stop him.

To get the Fifty Acres permit, Bell first claimed it was on Lot 2 (yet he claimed he never measured the 300 foot distance or the distance to his site). When Fifty Acres refused to transfer the permit and offered to let Bell purchase it for $20,000, (according to Bell), Bell refused. Considering the ultimate annual lease income of $72,000, this would have been a fair deal if the permit could authorize Bell to build at *his* site. Bell says he did not know at the time he refused to purchase the permit that it was not for *his* site, which was more than 150 feet further East. Having been unsuccessful with Fifty Acres, Bell actually represented to DOT's Nettleton that he had purchased the land at the Fifty Acres site. He knew he had not. If he had, he would not have needed to ask Fifty Acres to transfer the permit. He could have gone to the Superior Court to oust Fifty Acres from use of his property or property rights. Fifty Acres at all time after 1978 owned the land at the 300 foot E. site.

Bell's fraudulent representations induced Nettleton to grant a permit for a 100 by 10 ft. sign in an irregular fashion even though there appeared a conflict of distance. With unclean hands, Bell now claims he relied on the permit. What did he rely on, however? The face of the permit clearly said he was authorized to build at 300ft. E.

of the overpass and at no other place. If he had any doubts that the permit did not cover a site at 470 feet E., he had but to ask the administrator, who was Norton in May of 1988. Lloyd had tried to tell Norton Bell's site work was at the wrong permit location. Nettleton never forwarded the memo to Norton. It is relatively clear that there was, at best, loose practice on the part of Nettleton, but even he would not issue a permit for 470 feet E. of the overpass, which would be clearly contrary to the regulations and thus unauthorized. Given his experience in the outdoor advertising business, his knowledge of the relevant regulations and his knowledge of the course of doing business of the DOT section, Bell could not have reasonably relied on a permit authorizing construction at 300 feet East of the overpass to place his sign at 478 feet East, nor could he reasonably rely on Nettleton's directive to state on his second application that it replaced the Fifty Acres permit because Bell was aware that Fifty Acres had refused to transfer its permit to him.

Bell claimed that DOT should have notified him when its personnel saw him building at an unapproved location, even though it was his obligation to build at the authorized site (300 ft. E.). Lloyd did try to get authority for a DOT team to survey at the time he noticed site work. Nettleton did not forward the request to Norton. Nettleton, however, continued to rely on Bell's representation that Bell now owned the Fifty Acres site. If that representation had been true, then Nettleton could readily infer that Lloyd's request was based on lack of information and not necessary. In these circumstances, Nettleton's failure to give notice to Bell was not a culpable omission supporting estoppel, but rather, was the

logical result of Bell's misrepresentation as to who owned the Fifty Acres permit site.

If my estoppel denial concerning the location of the sign is adopted, and a violation is found and enforced on the issue of location, the billboard must be removed. If the above is the ultimate result, the issue of size may be moot, but the issue of penalty remains. To allow for more complete adjudication, however, I will address the oversize issue because it includes an estoppel element.

When Lloyd saw the framework of the billboard going up, all he could tell was that it looked "very big." He was entitled to presume Bell innocent of any violation until a violation could be seen. What Lloyd could see was that the length of the billboard probably exceeded 60 feet. What was not apparent until the sign was virtually complete was the height and total square footage. On those points, it was not possible for DOT to give notice of an oversizing violation before the project was completed. Bell himself testified that he had adjusted the protruding "bulletin board" section downward prior to completion to accord with a 1,000 square foot limitation (by his method of measurement). Nettleton, who had authority to do so, had agreed with Bell that the sign could be 100 feet long by 10 feet high, or a total of 1,000 square feet. I CONCLUDE that, under the equitable standards of estoppel, Bell had a right to rely upon and did reasonably rely upon Nettleton's express agreement that his sign could exceed 60 feet in length, although it was required to conform with the maximum square footage limitation of 1,000 which was approved. This conclusion is a close question, however, because the only reason Nettleton approved any element of nonconformity was because he

believed Bell had taken over the Fifty Acres permit, which allowed 1,125 square feet of sign area. Thus, it could be argued rather persuasively that Bell could not reasonably rely on Nettleton's agreement for an overlength sign because he knew it derived from the Fifty Acres permit to which he had no right. From Nettleton's point of view, it was in the public interest to get a permit holder to agree to make a permitted sign more conforming. Had a "replacement" sign been constructed on the authorized site, Nettleton's agreement could be viewed as beneficial and, on the length issue, an estoppel would prevent an unjust result.

The Unauthorized Site and Distance Violation

N.J.A.C. 16:41-8.1 defines "permit" as a certificate issued by the Outdoor Advertising Section granting permission to erect a sign *at the location described thereon.* The permit said 300 feet E. of the overpass. Bell's sign was about 470 feet of the overpass. Depending on the exactitude of measurement (via theodolite, transit, "wheeling off" or odometer), Bell's sign was 460 to 478 feet E. We are not here concerned with a deviation of ten feet (as between ten feet more or less than 470). The argument of respondent that building 100 to 150 feet away from the authorized site is acceptable is absurd when it is known that legally licensed locations must be 300 feet apart. (Bell knew from his first denial and discussions with DOT that there were unbuilt permit locations at about 300 and 600 feet E.). Bell was aware of the 300 foot proximity regulations. Regulation would be chaotic if a licensee could locate within 100 or 150 feet of his permit site.

There is no merit to the argument that the 300 foot authorization was an incorrect location in the first place and that the Mt. Royal Motel sign (formally listed on the Fifty Acres permit by its predecessor licensees) was actually on the land which Bell *subsequently* bought. (After the sign disappeared). The fact is that if a Fifty Acres permit predecessor built the sign at the wrong location not in accordance with its permit (300 feet), that has no bearing on the current issue. If a Fifty Acres predecessor had a pre-regulation sign at 470 feet E. and accepted a permit stating it was 300 feet E., the fault was that of the permit holder, not DOT, which accepted the permit holder's measure. The old signs (James and Mt. Royal) and their owners are long gone and what violations or errors they may have committed are not at issue.

The term "legal description" was used by Nettleton and Bell in the sense of "just a legal description," i.e., not an actual measurement and not what is significant. Both have an erroneous view of the meaning of the term. A permit is a legal document granting a right to do something. A deed and mortgage are also legal documents. Such legal documents often contain controlling descriptions and land measures. Bell's right to build a sign stems from the permit granted. The legal description is an essential element of the grant. DOT granted and Bell accepted a permit conditioned on the legal description of location. DOT did not *erroneously* grant a permit for 300 feet as distinguished from 470 feet. It could not legally grant a permit in derogation of its own rules. A loose analogy to the old principle of estoppel indeed applies: the State could not deny it gave Bell the right to build at the 300 foot location, but Bell cannot claim the State gave

him a right to build at some place other than that legally described. *Suburban Golf Club v. State Highway Comm'r*, 92 *N.J. Super.* 125, 139 (Law Div. 1966).

If Bell had built at the 300 foot E. location, however, Fifty Acres could have gone to court to have the sign removed because Bell had no right to build on the Fifty Acres property. Obviously, the legal description of a site is vital. Policy wise, a conclusion that the legal description of the grant of right of the DOT permit is determinative of whether or not a violation has occurred is the only viable regulatory interpretation which can be placed on *N.J.A.C.* 16:41-8.1 *et seq.* by the plain meaning of the definition of permit and the entire context of the regulatory scheme. *N.J.A.C.* 16:41-8.4(a) provides that any roadside signs shall be by permit . . . and pursuant to the conditions set forth in such permits. One such condition, the most important one, is placement at the specified site. Unless the regulation is thus interpreted, it is impossible to give force to the mandate for 300 foot and 100 foot spacing in *N.J.A.C.* 16:41-8.6(a)5v. I CONCLUDE that respondent has violated his permit by building at an unauthorized site and building less than 300 feet from two authorized permit locations (Fifty Acres and Resorts). The result of any other interpretation is amply illustrated in the record of this case, which involved extensive probing into non-relevant matters which occurred years ago and required the study of old deeds, maps, surveys, correspondence, photographs and the memory of old timers.

Spacing Requirements and Penalty

Respondent cannot be granted a permit for a sign 470 feet E. of the Delilah Road overpass because it would be in violation of *N.J.A.C.* 16:41-8.6(a)5v. His sign is within 300 feet of both the unbuilt Fifty Acres and Resorts permits, which are current. Thus the only appropriate penalty pursuant to *N.J.A.C.* 16:41-8.15 and 8.16 for the violation of unauthorized placement and spacing violations is removal and recovery of the cost thereof.

Size and Non-Conformity

Although these issues may be mooted by removal, several recent cases I am aware of have brought the same issues into prominence. I believe it is in the public interest to decide these issues as well as to afford a complete determination in this case because of the concurrent Superior Court appeal and the need to determine penalty. Respondent argues in this case that his sign is nonconforming and that he thus had the right to a square footage exceeding current limitations of 1,000 square feet and a length of 60 feet.

N.J.A.C. 16:41-8.1 defines nonconforming sign as:

> . . . a sign, display or device which was lawfully erected and maintained prior to the enactment, revision or amendment of N.J.S.A. 27:7A-11 et seq. (Chapter 371, Laws 1971), or of its pursuant regulations, but fails to conform with requirements of said statute by reason of such enactment, revision or amendment, or by reason of any other change in conditions.

Advertising structure is defined as:

> . . . any rigid or semi-rigid material, with or without advertisement displayed thereon, situated upon or attached to real property outdoors, primarily or principally for the purpose of furnishing a background or base or support upon which an advertisement may be posted or displayed.

N.J.A.C. 16:41-8.6(a)9 states that a lawfully categorized nonconforming sign structure may remain if it meets the following criteria:

> (1) It must continue to be lawfully erected and maintained;
>
> (2) It has not been destroyed, abandoned, disused;
>
> (3) Its size is the same as on the effective date of the adoption, revision, or amendment of the law or regulation which rendered the sign nonconforming;
>
> (4) Its illumination is substantially the same as on the effective date of the adoption, revision, or amendment of the law or regulation which rendered the sign nonconforming. Illumination may not be provided for nonconforming signs which had no previous lighting. Revisions in the type of illumination will be permitted with prior approval of the New Jersey Department of Transportation, to allow for use of more energy efficient lighting systems.
>
> (5) Its basic structure remains substantially the same as on the effective date of the adoption, revision, or amendment of the law or regulation which rendered the sign nonconforming. Changes in the basic structural components

will be considered by the New Jersey Department of Transportation, if it can be demonstrated by the permittee that such revisions are necessary to meet local building codes or State or Federal regulations.

Based on the findings, a sign existed at or near Bell's site on Lot 2 as far back as 1940. Its construction may have predated permit requirements. Thus that sign was presumptively lawfully erected prior to L. 1971 C. 371. It did not continue to be lawfully maintained, however, because no permit was ever issued for a sign at or near 470 feet E. of Delilah Road overpass at any time. The closest permit to the site in 1959 was 528 feet E. of Delilah Road overpass, but it had lapsed by 1971 (Finding no. 6). In 1969, the first permit for the 300 ft. E. site was granted (Finding no. 7). Thus an advertising structure (pilings) remained on the Bell site, but no permit was ever applied for or granted for it after regulation began. On the basis of lack of lawful maintenance (*i.e.*, obtaining a permit) after 1971, Bell's sign can not be categorized as a nonconforming sign structure.

Additionally, the sign had been destroyed and the structure (pilings) disused for may years before Bell purchased Lot 2 in 1987. Under *N.J.A.C.* 16:41-8.6a9i(2), such a sign structure cannot remain as a nonconforming sign. The sign structure was abandoned, disused and destroyed as those terms are defined in *N.J.A.C.* 16:41-8.4(a)13. Notice to the permittee was not required because there was no permittee for the Bell site on Lot 2. If a permit had existed for the site and the owner continued to renew it, the *structure* could not be considered

abandoned, and the location would be classified as an unbuilt location.

Because respondent's sign was not a nonconforming sign, respondent was obligated to conform to the 1,000 square foot limitation of *N.J.A.C.* 16:41-8.6(a)4i. Pursuant to *N.J.A.C.* 16:41-8.6(a)4 and 5i, the dimensions *include* "border, trim, cutouts and extensions, but exclude decorative bases and supports." *N.J.A.C.* 16:41-8.1 defines the area of advertising surface as the "area in square feet measured by the smallest square, rectangle, triangle, circle or combination thereof which will encompass the entire sign." The regulations are quite clear and the sign measured by Norton in accordance with them has a square footage of about 1,175. Bell's method of eliminating all border and trim in measuring it patently contrary to the regulations and without any support in law. The argument that proper measurement for a nonconforming sign is in accordance with old Treasury regulations is frivolous because current regulations clearly deal with nonconforming signs. Furthermore, Bell had *agreed* to a sign of 1,000 square feet. I CONCLUDE that Bell intended from the beginning to construct a sign with a square footage of at least 1,125 square feet (P-19, letter to Lahn) and knowingly and deliberately constructed a sign well above the agreed upon 1,000 square foot limitation contrary to law and to his agreement with Nettleton.

Penalty

N.J.A.C. 16:41-8.16 provides that a dollar penalty may be imposed in addition to the penalty of removal, upon any person who erects, uses or maintains any advertising

structure without complying with all of the applicable provisions of *N.J.S.A.* 27:7A-11 *et seq.* Fines or penalties are authorized by *N.J.S.A.* 27:7A-23, but that statute applies to Superior Court proceedings and includes a criminal penalty. Removal as a remedy is authorized (*N.J.S.A.* 27:7A-22). *N.J.S.A.* 27:7A-17 authorizes the Commissioner of Transportation to adopt regulations governing roadside advertising. *N.J.A.C.* 16:41-8.16 has been in effect and has not been amended since April 1973. (5 *N.J.R.* 167(b)). The afore cited regulation establishes a minimum penalty ($50) identical to that in *N.J.S.A.* 27:7A-23, but contains a lower maximum penalty per offense ($200) than the statute ($500). The rule adds a section defining each day of violation as a separate offense. There appears to be no case law on the issue of the validity of *N.J.A.C.* 16:41-8.16 or the penalties therein. I therefore assume the promulgation of the rule as to fines to be within the authority of the Commissioner. It would be legally inappropriate for an ALJ in a forum within the agency's jurisdiction to conclude otherwise. I note, however, that the rule adoption follows the statute slavishly and includes authorization for imprisonment in default of payment. I interpret that section to be applicable only in a collection proceeding in a court of competent jurisdiction.

Assuming the rule on penalties to be valid, I next address the manner of its application. I have found as a fact that DOT does not regulate noncommercial speech. The regulator ignored Bell's use of the billboard for political advertisement, even though both the rule and statute do not *prima facie* exclude noncommercial speech. Thus its application does not appear to be constitutionality offensive to the First Amendment.

Although the penalty sought in this case adds up to many dollars, DOT has proved that its purpose of deterrance is well served by the magnitude of the total dollars in this case. Respondent received $6,000 a month or $72,000 per year for use of the billboard. Blatant violations of the kind found here cannot be deterred if the penalty is less than the reward for continued unlawful conduct. At the rate of $50 per day for the first 30 days, $100 for the second 30 days and $200 per day until removal, on July 10, 1990, $32,000 in penalty accrued. Thus after 60 days, the penalty is $73,000 per year of 365 days (at $200 per day). This sum very closely tracks the gross income received by respondent for use of the billboard. I CONCLUDE the penalty assessed is in no way arbitrary, and is not excessive given the nature of the offenses in this case. There would be no deterrance at all if removal were the only remedy: construction and removal costs would be nothing but a minor cost of doing this kind of lucrative business. I so CONCLUDE.

It is therefore ORDERED that respondent remove the sign within ten days of a final order in this docket, and if respondent does not do so, DOT may assess costs of removal; and

Further ORDERED that respondent shall pay a fine of $50 per day for the first 30 days, $100 for the next 30 days and $200 per day thereafter until removal of the sign, penalty to accrue beginning on December 6, 1989.

I hereby FILE My initial decision with the COMMISSIONER OF THE DEPARTMENT OF TRANSPORTATION for consideration.

This recommended decision may be adopted, modified or rejected by the COMMISSIONER OF THE DEPARTMENT OF TRANSPORTATION, who by law is authorized to make a final decision in this matter. If the Commissioner of the Department of Transportation does not adopt, modify or reject this decision within forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with *N.J.S.A.* 52:14B-10.

Within thirteen (13) days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **DIRECTOR, OFFICE OF REGULATORY AFFAIRS, DEPARTMENT OF TRANSPORTATION, 1035 Parkway Avenue, CN 600, Trenton, New Jersey 08625,** marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

May 13, 1991
Date

/s/ Naomi Dower-Labastille
NAOMI DOWER-
LABASTILLE, ALJ

Receipt Acknowledged:

May 15, 1991
Date

/s/ Gail Gurba
DEPARTMENT OF
TRANSPORTATION

MAY 20 1991
Date

Mailed to Parties:

/ct

/s/ Jaynee LaVecckia
OFFICE OF
ADMINISTRATIVE LAW

APPELLATE DIVISION OPINION
DATED MARCH 31, 1993

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE COMMITTEE ON OPINIONS

SUPERIOR COURT OF
NEW JERSEY
APPELLATE DIVISION
A-6292-90T3

(Filed Mar. 31, 1993)

NEW JERSEY DEPARTMENT
OF TRANSPORTATION,

Petitioner-Respondent,

v.

WES OUTDOOR ADVERTISING COMPANY,

Respondent-Appellant.

Argued: March 9, 1993 – Decided: MAR 31 1993

Before Judges Pressler, R.S. Cohen and Kestin.

On appeal from the Department of Transportation.

Wesley K. Bell, *pro se*, argued the cause for appellant.*

Leroy Touchton, Deputy Attorney General, argued the cause for respondent (Robert J. Del

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*We assume that Wes Outdoor Advertising Company is an unincorporated, sole proprietorship. *R.* 1:21-1(c).

Tufo, Attorney General; Mary C. Jacobson, Deputy Attorney General, of counsel, Mr. Touchton on the brief).

PER CURIAM

In 1989, the Department of Transportation determined that a sign owned by appellant, Wes Outdoor Advertising Company (the company), on Route 30 in Absecon was oversize and had been erected in a location other than that permitted. The company was ordered to remove the sign. At the company's request a contested case hearing was held before an administrative law judge. The agency's earlier order was sustained by the Commissioner of Transportation in a final decision wholly adopting Judge Dower-LaBastille's findings and conclusions.

After fully considering the briefs and oral arguments advanced, we regard the issues raised to be clearly without merit. *R.* 2:11-3(e)(1)(D) and (E). The agency's findings and conclusions are supported by substantial evidence in the record. *Close v. Kordulak Bros.*, 44 *N.J.* 589, 598-99 (1965).

We remand on the issue of penalty only. Since December 6, 1989, the company has been under order to pay $50 per day for the first 30 days, $100 per day for the next 30 days and $200 per day thereafter until removal of the sign. *See N.J.S.A.* 27:7A-23 (since repealed and superceded by *N.J.S.A.* 27:5-16); and *N.J.A.C.* 16:41A-8.1 (since repealed and superceded by *N.J.A.C.* 16:41C-10.5).

Under some circumstances, a $50-$200 per day penalty might well be seen as excessive. In this instance, however, it was acknowledged at oral argument that the

company's gross income from the billboard at issue was $6,000 per month, about $200 per day. While a violation of law exists, it is not inappropriate for the Department of Transportation to impose a penalty which at least equals or reasonably exceeds the amount of income the violator has received from the unlawful billboard. No person should be permitted to profit from his or her own unlawful activity. *Cf. Carr v. Hoy*, 2 *N.Y. 2d* 185, 158 *N.Y.S. 2d* 572, 139 *N.E. 2d* 531 (1957).

Nevertheless, it was also asserted at oral argument that the contract which generated the $6,000 per month payment terminated in November, 1992. Under these circumstances, it is essential that a determination be made at the administrative level concerning the precise dollar penalty to be imposed after specific facts are established either by way of stipulated or in a hearing limited to that issue alone.

Affirmed in all respects except as to the specific penalty amount to be imposed. The matter is remanded for a determination of that issue. We do not retain jurisdiction.

APPENDIX

SUPREME COURT OF NEW JERSEY
C-99 September Term 1993
37,025

NEW JERSEY DEPARTMENT OF TRANSPORTATION,	**ON PETITION FOR CERTIFICATION**
Petitioner-Respondent,	
v.	
WES OUTDOOR ADVERTISING COMPANY,	**(Filed Sept. 23, 1993)**
Respondent-Petitioner.	

To the Appellate Division, Superior Court:

A petition for certification of the judgment in A-6292-90 having been submitted to this Court, and the Court having considered the same;

It is ORDERED that the petition for certification is denied, with costs.

WITNESS, the Honorable Robert L. Clifford, Presiding Justice, at Trenton, this 21st day of September, 1993.

/s/ Stephen Townsend
CLERK OF THE
SUPREME COURT

A-6292-90T3

NEW DEPARTMENT OF TRANSPORTATION

VS

WES OUTDOOR ADVERTISING COMPANY

APPELLATE DIVISION

DOCKET NO.	A-6292-90T3
MOTION NO.	M-5221-92
BEFORE PARTY:	E
JUDGE(S):	PRESSLER COHEN KESTIN

MOTION FILED: MAY 6, 1993

ANSWER(S)
FILED: BY:

BY:

BY:

BY:

BY:

SUBMITTED TO COURT: MAY 24, 1993

ORDER

THIS MATTER HAVING BEEN DULY PRESENTED TO THE COURT, IT IS ON THIS 24th DAY OF May, 1993, HEREBY ORDERED AS FOLLOWS:

MOTION BY APPELLANT/~~RESPONDENT~~
WES OUTDOOR ADVERTISING CO
FOR RECONSIDERATION

GRANTED	DENIED	OTHER
	X	

SUPPLEMENTAL:

FOR THE COURT:

/s/ Sylvia B. Pressler
SYLVIA B. PRESSLER P.J.A.D.

SUPREME COURT OF NEW JERSEY
M-873 September Term 1993
37,025

NEW JERSEY DEPARTMENT
OF TRANSPORTATION,

Petitioner-Respondent,

v.

WES OUTDOOR
ADVERTISING COMPANY,

Respondent-Movant.

ORDER

(Filed
Mar. 24, 1994)

This matter having been duly presented to the Court, it is ORDERED that the motion for reconsideration of the petition for certification is denied.

WITNESS, the Honorable Robert L. Clifford, Presiding Justice, at Trenton, this 22nd day of March, 1994.

/s/ Stephen Townsend
CLERK OF THE SUPREME
COURT

EXHIBIT R-31-A

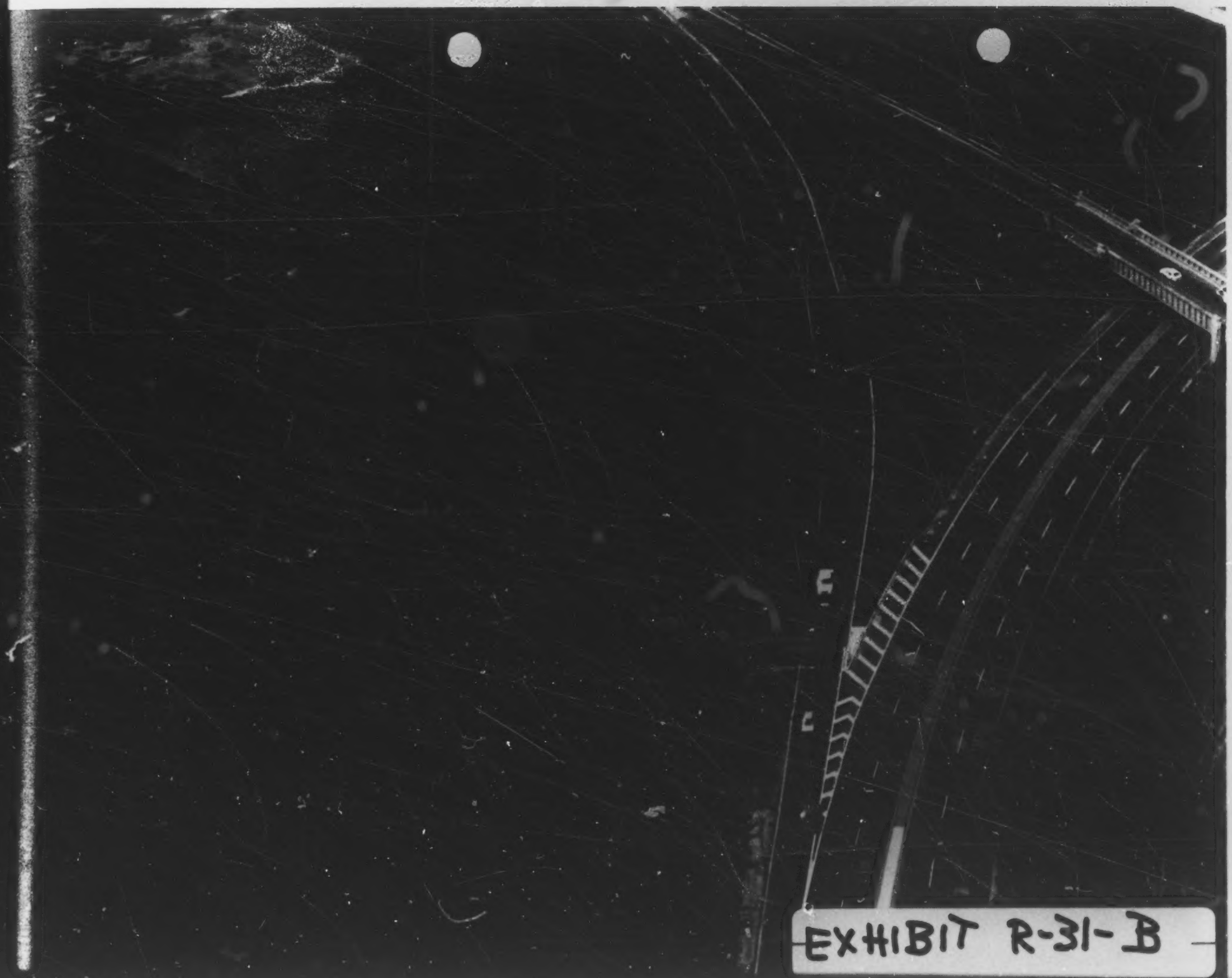


EXHIBIT R-31-B

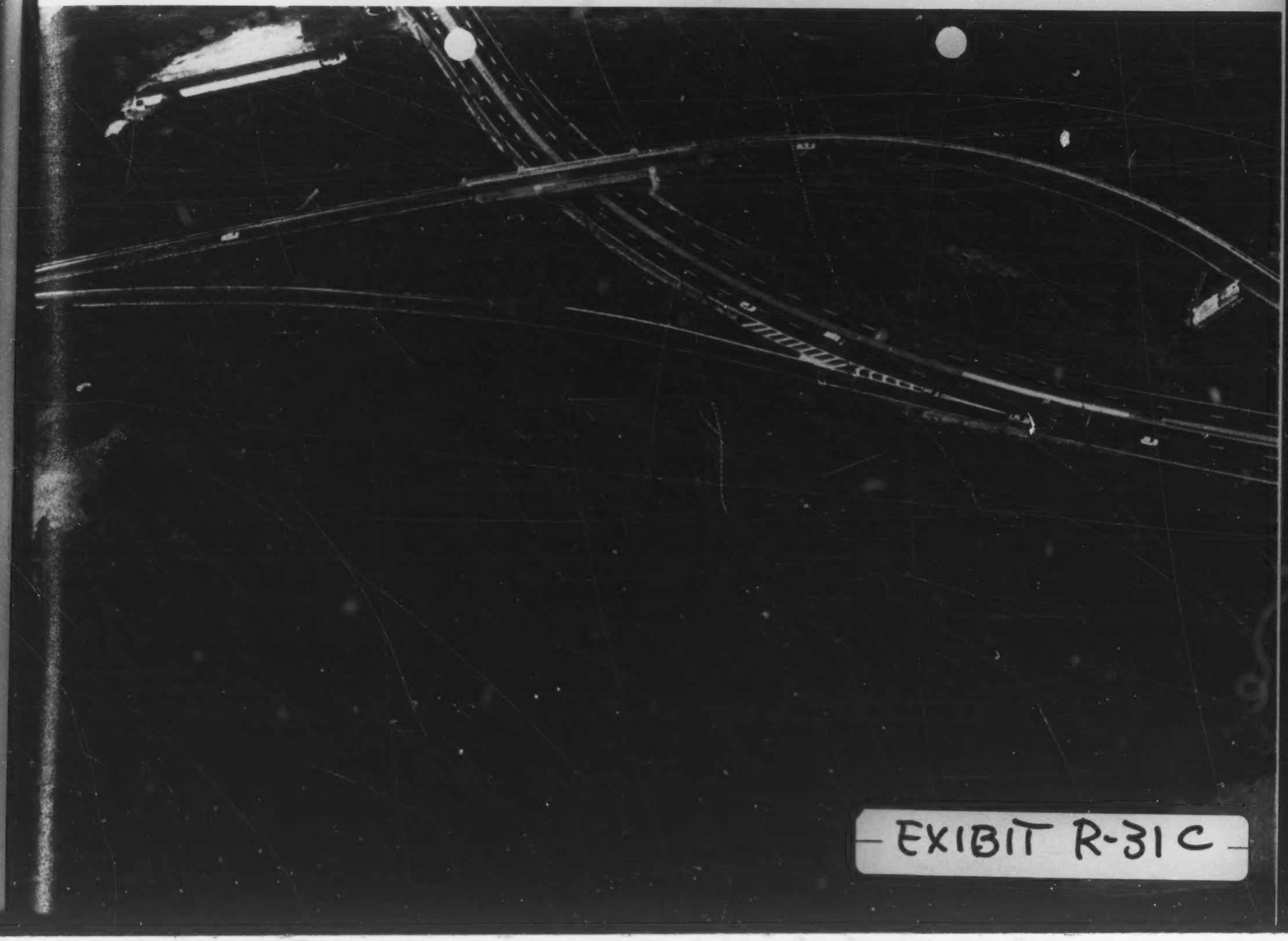
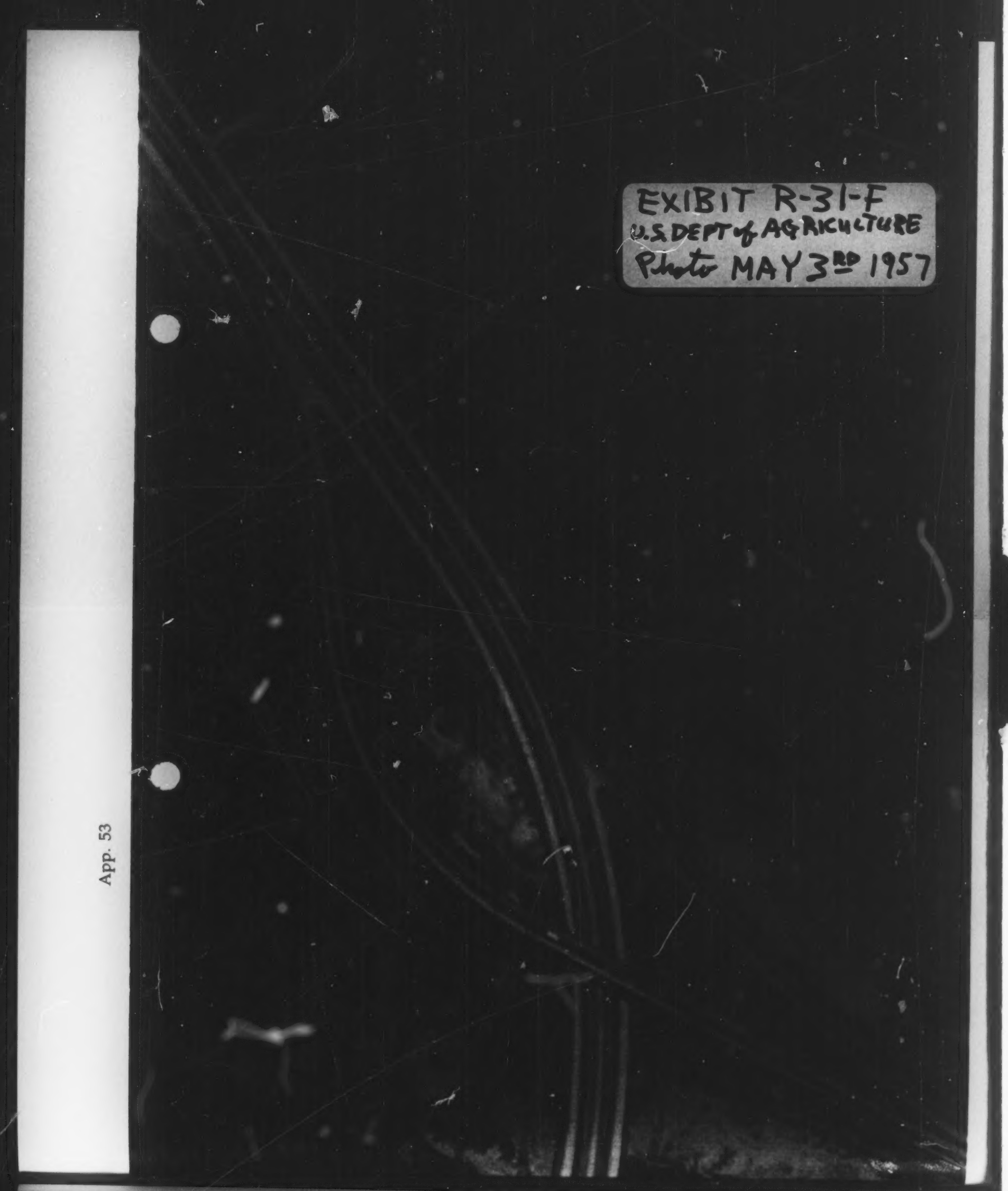
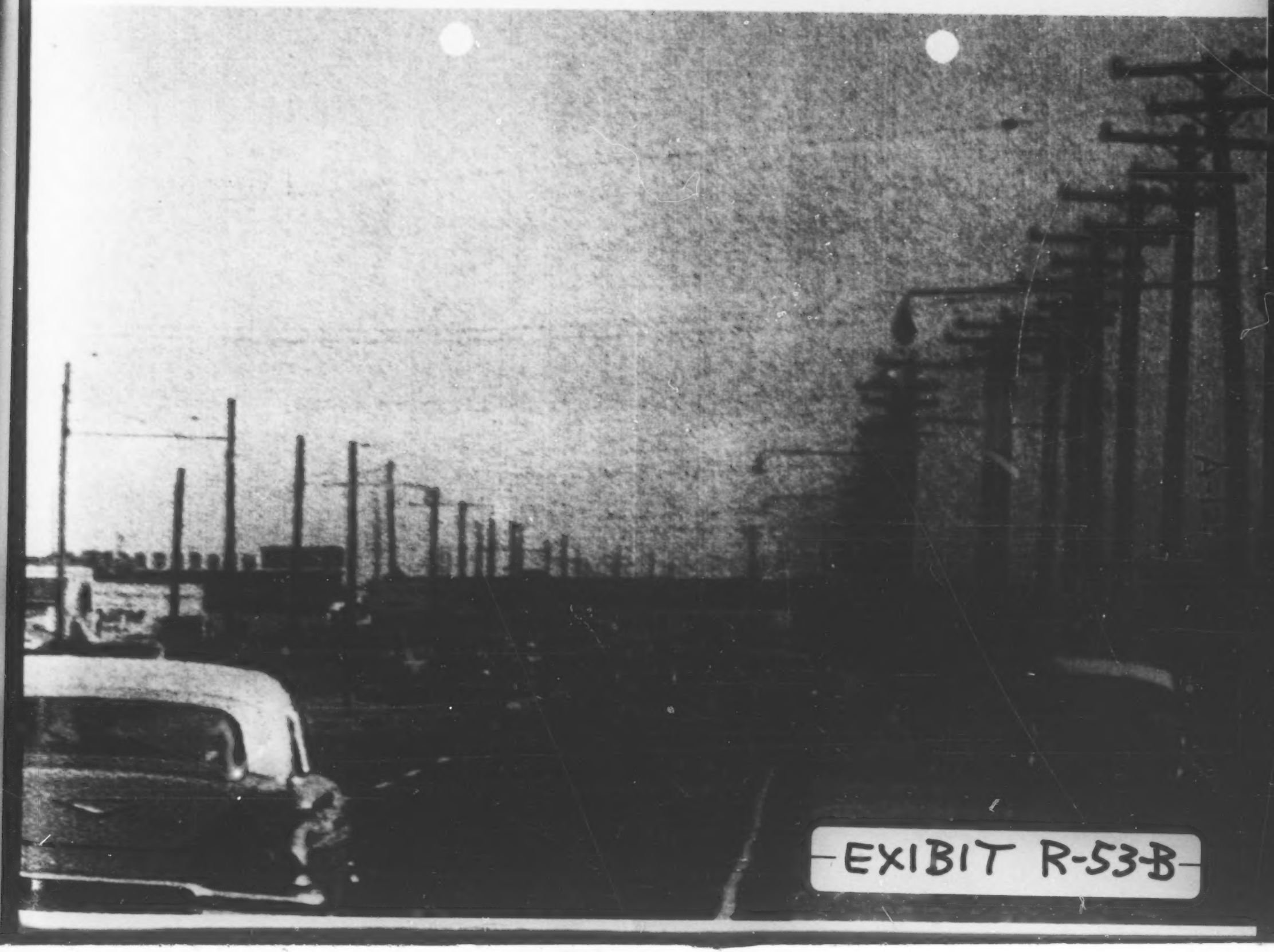

EXIBIT R-31C

EXHIBIT R-31-D

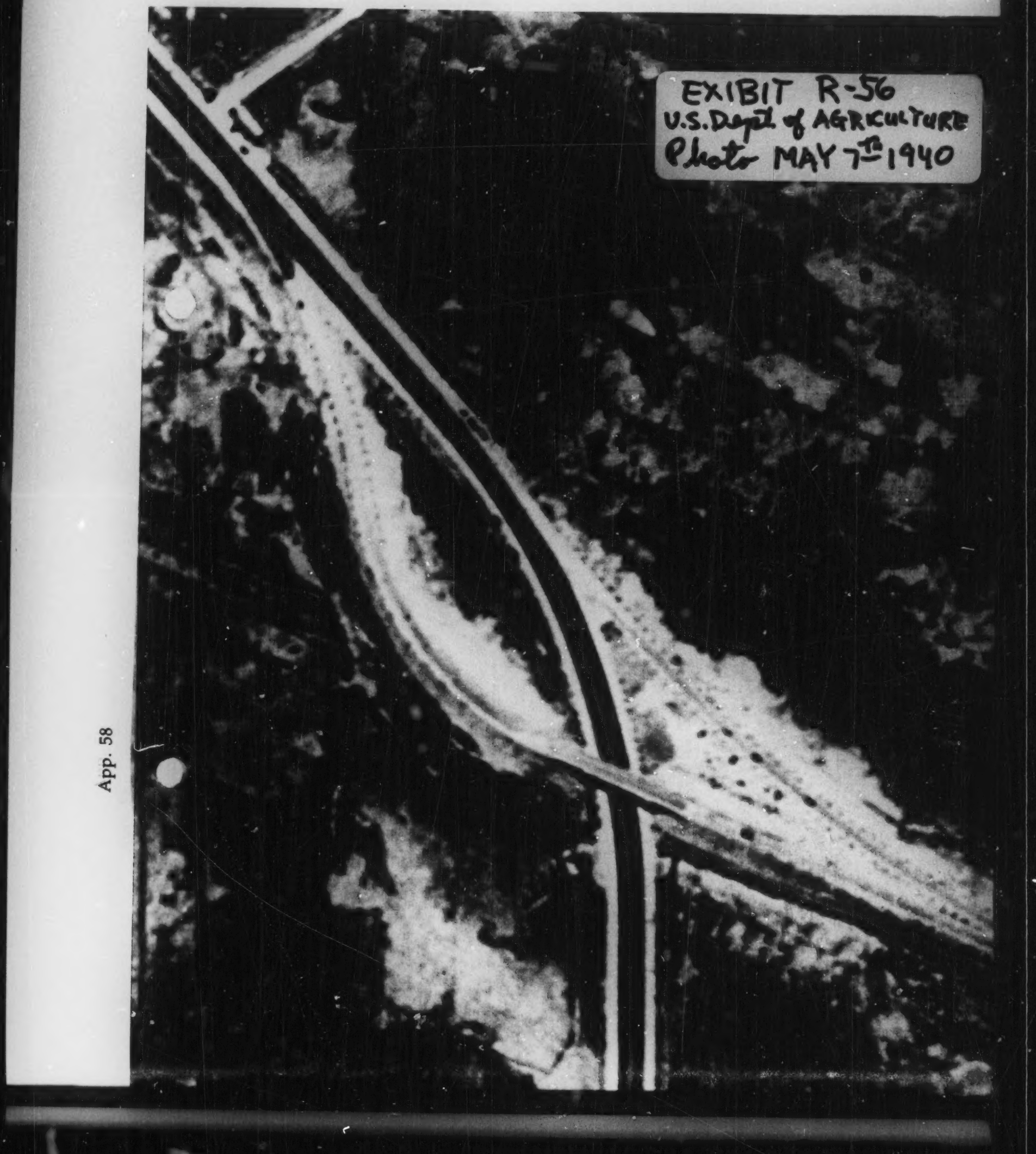

EXIBIT R-31-F
U.S. DEPT of AGRICULTURE
Photo MAY 3RD 1957

Premiere Season
ROYAL Motel
PARK PLACE Near BOARDWALK
Capacity 700 ATLANTIC CITY
EXIBIT R-53A


EXIBIT R-53-B

S-121-A
EXHIBIT R-55A

EXIBIT R-55B


EXIBIT R-56
U.S. Dept of AGRICULTURE
Photo MAY 7th 1940

UNITED STATES CONSTITUTION AMEND.XIV

§ 1. Citizenship rights not to be abridged by states.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law.

EXHIBIT P-2

(LOGO)

IN REPLY PLEASE REFER TO -

STATE OF NEW JERSEY
DEPARTMENT OF TRANSPORTATION
1035 Parkway Avenue
CN 600
Trenton, New Jersey 08625

Hazel Frank Gluck
Commissioner

December 23, 1986

Wesley K. Bell
P.O. Box 538
188 Route 72
Manahawkin, NJ 08050

RE: Application 54171 & 54172
Route 30
Absecon, Atlantic County

Dear Mr. Bell:

Enclosed is the copy of the application in the name of Fifty Acres Parcels 3 & 4 as discussed on the phone with you. If you are proposing to place your sign on existing pilings, they would most likely be on the site of this permit. Since Fifty Acres Parcels maintains their permits up-to-date, we see this as a conflict with your proposal. If you bought this parcel from the City of Absecon, they are obligated to advise both you, as purchaser, and Fifty Acres Parcels, as leasee under contract.

We must, therefore, deny your application under N.J.A.C. 16:41-8.6(a)5V, until such time as you can resolve

this problem. At that time, we will accept a new application from you. Your application should also be accompanied by a permit or release from D.E.P. under the Wetlands Act.

Your other application #54172, adjacent to the Old Bay View Motel would appear to be acceptable for permit upon receipt of a permit or release from D.E.P. under the Wetlands Act. Again, you may re-apply when you have received that permit or release. We are placing this application in our cancelled files in order to clear our records.

Sincerely,

/s/ John W. Nettleton
Supervisor of Outdoor
Advertising

JWN: pab

cc: Mr. P. Piot
Mr. R. Lloyd

Form OA-6 10/80

NEW JERSEY DEPARTMENT OF TRANSPORTATION – APPLICATION FOR OUTDOOR ADVERTISING PERMIT

CL-A-4-5 P-1

FOR OFFICE USE ONLY

APP. NO.	YEAR	PERMIT NO.	VIOL. NO.	PROCESS DATE	LATE CHG.	FEE	AMOUNT RECEIVED				CASH	BY Dem
							Fee	Late Chg.	TOTAL		CHECK	
54171	86					125 Annual				X		DATE 7/1/86
						Semi	125		125		M.O.	

SEE INSTRUCTIONS ON REVERSE SIDE BEFORE COMPLETING – FILL IN ALL SPACES BY TYPING OR PRINTING IN INK

1. TRADE NAME WES OUTDOOR ADVERTISING CO.
2. NAME WESLEY K. BELL TEL. NO. 597-3222
3. P.O. ADDRESS P.O. Box 538 - 188 Rt. 72
4. CITY MANAHAWKIN STATE N.J. ZIP CODE 08050
7. LOCATION OF SIGN Rt. U.S. 30 - at Pole # 13369
8. MUNICIPALITY ABSECON 9. COUNTY ATLANTIC

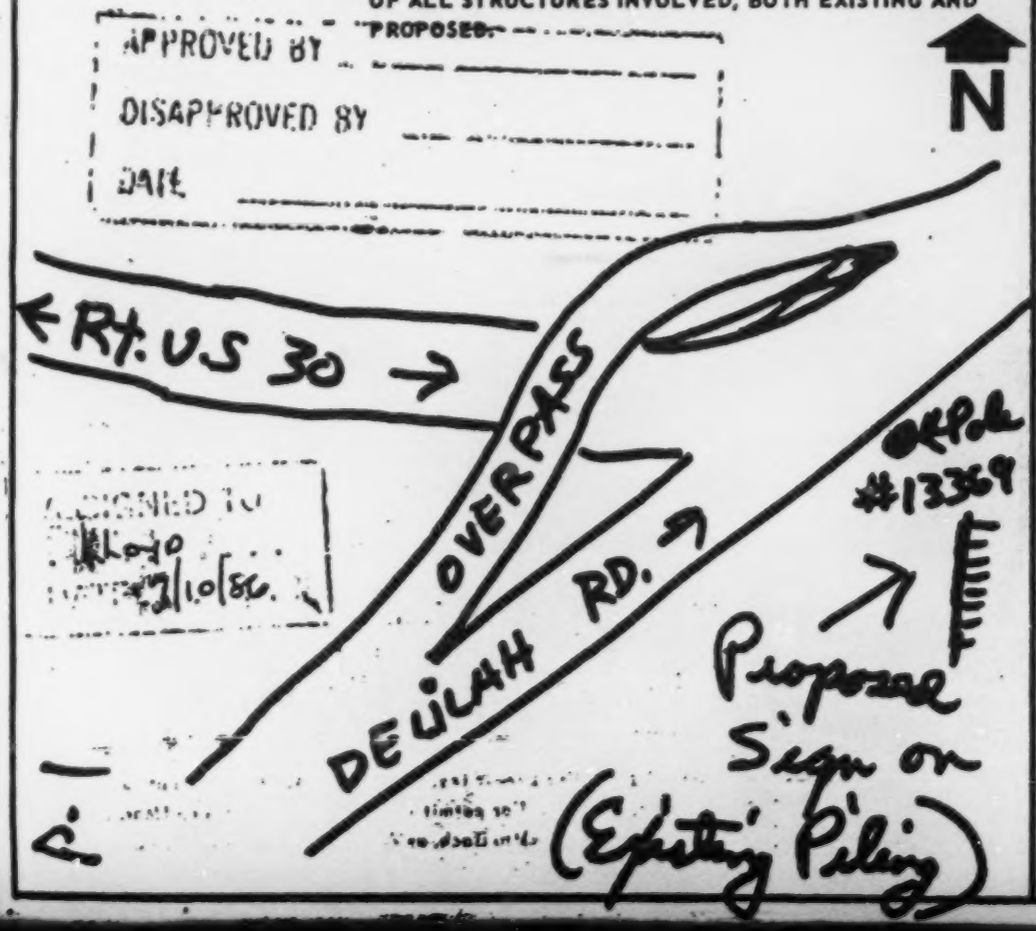
5. DIMENSIONS OF SIGN:
Feet Long 40
Feet High ..... X 16
Number of spaces or signs X one
Total Square Feet ..... = 960
A sign is listed as two spaces when Advertising on both sides

6. TYPE OF SIGN:
☐ No. 1 Roof
☐ No. 2 Wall
☒ No. 3 Ground
☒ Illuminated

M.P.

10. SKETCH OF LOCATION *IMPORTANT!* IF APPLICATION IS FOR A STRUCTURE WHICH WILL CONSTITUTE PART OF A MULTIPLE FACED, BACK TO BACK OR V-TYPE DISPLAY, SHOW DIMENSIONS OF ALL STRUCTURES INVOLVED, BOTH EXISTING AND PROPOSED.

APPROVED BY
DISAPPROVED BY
DATE



11. ADVERTISEMENT TO BE DISPLAYED IS:

12. ZONING
The property on which the sign will be located is zoned for BUSINESS use.

13. CERTIFICATION *NOTE:* R.S. 54:52-2 provides that anyone who makes a false affirmation shall be guilty of a misdemeanor.

ENCLOSED IS *CHECK* ☒ *MONEY ORDER* ☐ *FOR* $ 125.00

In accordance with the provisions of c. 191, L. 1959, as amended and supplemented, and regulations promulgated thereto, I, the undersigned, hereby make application for an Outdoor Advertising Permit to erect or maintain an advertisement at the location described. I declare that the information given is true to the best of my knowledge and belief, and that I have the permission of the property owner or his agent to use the property for said purpose. A copy of the owner's written permission will be provided to the Outdoor Advertising Section upon request. I agree to maintain the sign in a safe and clean condition, and I further agree to remove the sign or advertisement upon expiration or revocation of the permit, repainting the portion of the building or other structure to the original color as necessary, to completely obliterate ... ght of way will not be trimmed ... d that such alteration or any oth... sult in immediate revocation of th... that this application is denied, I fully understand that this amount will not be refunded.

EXHIBIT P-1

Name, Address of Property Owner CITY OF ABESCON
ABESCON, N.J.

SIGNED BY Wesley K. Bell

TITLE owner DATE 7-3-86

FORM OA-19 (REV 11-1-80) (Code No.) Municipality ____ Co. ____ Name ____ ( )

App. No. 12194

FEE $ 30.00

(FOR OFFICE USE ONLY)

OUTDOOR ADVERTISING TAX BUREAU
FIELD REPORT ON LOCATION IN LIEU OF MISSING APP.

19 68 P. No. 3851

Code Letters ____

(FOR OFFICE USE ONLY)

1. Trade Name Atlantic Out Sign, . Name ____

2. P.O. Address: 198 S. Virginia Ave., Atlantic City, N.J.08401

3. Location: Rt. US 30 s/s 300 ft. e/o Delilah Rd. overpass Rep. P. No. ____

4. Municipality: Absecon

5. County: Atlantic

6. Dimensions of sign or display: ____ ft. long X ____ ft. high, Total ____ Sq. Ft.

TYPE [ ] [X] [ ] Removable
1 2 3 [ ] Removable w/assistance

No. of spaces 1 total area of 1125 Sq. Ft.

7. The issuance of a permit is not recommended for reasons checked below:

Reg. 16:11-3.1(a) [ ]
Reg. 16:11-3.1(b) A [ ] B [ ] C [ ] D [ ]
E [ ] F [ ] G [ ] H [ ]

8. The sign is used to advertise:
Mt. Royal Motel

9. I contacted the owner of the sign,
Mr. ____

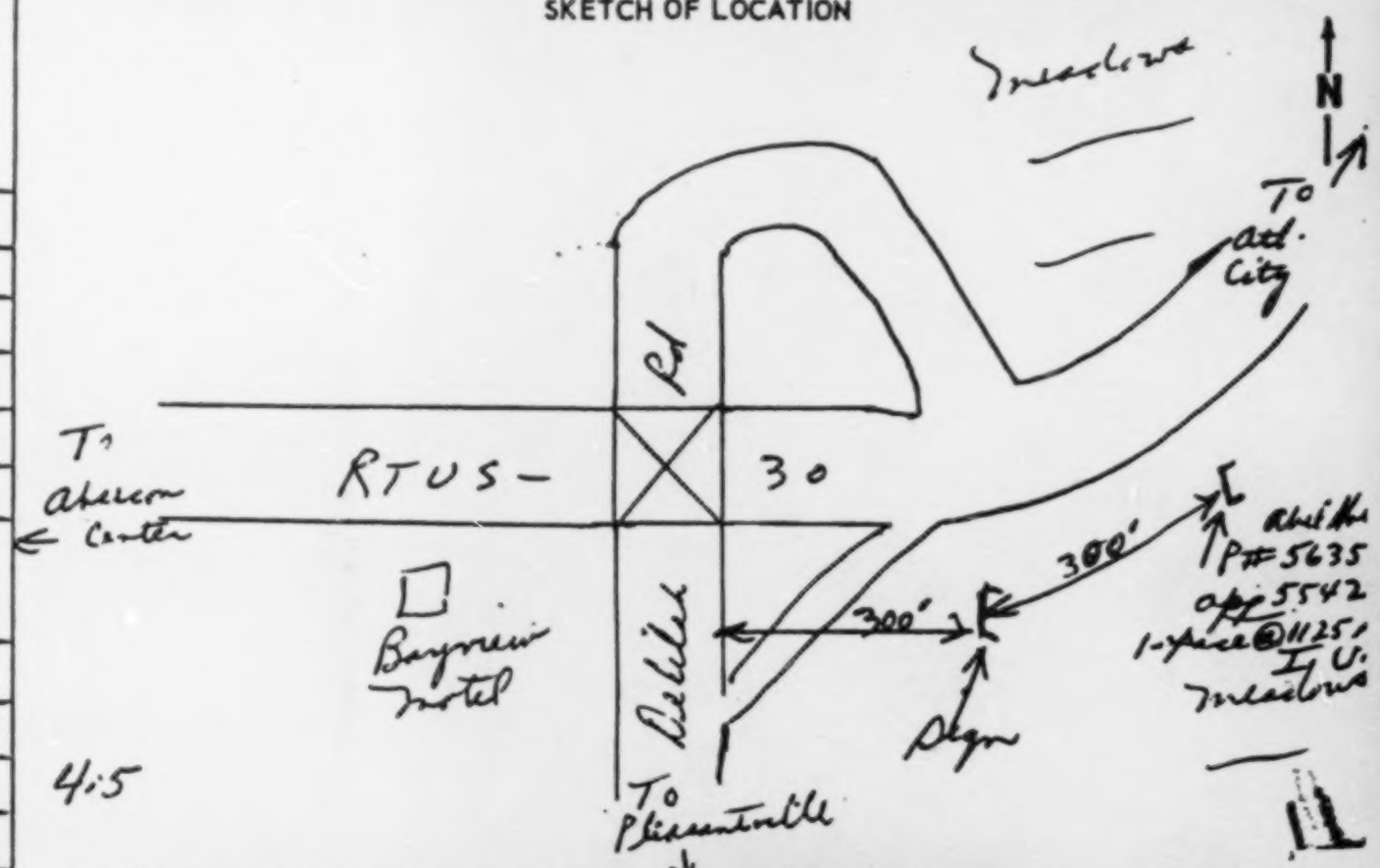
10. Signature [illegible]
Title Inspector Date 1/30/69

(FOR OFFICE USE ONLY)

Approved by ____
Reason for disapproval ____

STATE SUPERVISOR

SKETCH OF LOCATION



N.B. This form must be filled out in every detail. Whenever approval or a violation report would indicate the refusal to under Item No. 7. On the space indicated, a sketch or display. In showing the road or street, 2 lines should be and to indicate the nearest places from the proposed location. Where there are licensed locations on either side of the proposed location, permit numbers of said licensed locations should be shown on the sketch, and whenever the licensed [illegible] are not in use, "Not in Use" should be written under the permit number. Any other information which would enable to locate the exact site of the proposed location should be given, and if additional space is required, the reverse side may be used. Whenever the 500 or 250 ft. distance is not required because the location is in a "Built-up Area", the report should show the extent of the built-up area.

EXHIBIT P-11

James'
original
TO FIT THE MOUTH
SALT WATER TAFFY
RICH IN DEXTROSE
3
BOARDWALK
STORES

EXHIBIT R-32

EXHIBIT R-32-A

Summer of 1938

Bright Yellow Background
James White
Red Salt Water Taffy Red
cut to fit the Mouth
Dextrose Black

EXHIBIT P-4-A

Wes Outdoor Adv. Co.
P.O. Box 538 Manahawkin, NJ 08050

November 9th 1987

New Jersey Department of Transportation
1035 Parkway Avenue CN 600
Trenton, New Jersey 08625

Attention: John Neddelton

Dear Mr. Neddelton,

Enclosed is my Certified Survey of Lot 2 Block 226.01 in Abescon New Jersey.

This survey clearly shows the location of the Billboard Pilings on my lot at which site Fifty Acres a partnership, is holding Permit #15516 which replaced #12194 held by Atlantic Outdoor Sign Co.

Also enclosed is a photograph which was taken in August 1938 when this Billboard was first errected by George Fisher then trading as Atlantic Outdoor Sign Co. and at that time the billboard was advertising James Salt Water Taffy.

I requested Mr. Luhn the present holders of the permit to assign it over to me as it was on my property and Mr. Luhn requested that I pay him Twenty Thousand Dollars for the transfer.

I refused and advised him that I would have a survey made which will show that the location is actually on my property.

I request that you revoke the present permit and issue my pending application on the same site of the existing permit.

Sincerely,

/s/ Wesley K. Bell
Wesley K. Bell t/a
WES OUTDOOR ADVERTISING CO.

WKB:nub

(SEAL)

121320 01-02 Hr #123 Ck #. 102

Form OA-6 9/74

APPLICATION FOR OUTDOOR ADVERTISING PERMIT

NOTE: Do not use this application for proposed signs which will be within 660 feet of, and visible to Interstate Highways or Freeways – Request application No. OA-7 for such signs.

FOR OFFICE USE ONLY

APP. NO	YEAR	PERMIT NO.	VIOL. NO.	PROCESS DATE	LATE CHG.	FEE	AMOUNT RECEIVED				BY
							Fee	Late Chg.	TOTAL	CASH / CHECK / M.O.	
47910		15516				125 Annual					B.B
						Semi			125.00	✓	DATE 4-10-78

SEE INSTRUCTIONS ON REVERSE SIDE BEFORE COMPLETING – FILL IN ALL SPACES BY TYPING OR PRINTING IN INK

1. TRADE NAME Fifty Acres Parcels 3 &4

2. NAME _____ TEL. NO. _____

3. P.O. ADDRESS Rt. 70 & 73 Circle, P.O. Box 218

4. CITY Marlton, STATE NJ ZIP CODE 08053

7. LOCATION OF SIGN Rt. US 30 SS 300Ft. E of Delilah Rd Overpass M.P. _____

8. MUNICIPALITY Absecon City 9. COUNTY Atlantic

5. DIMENSIONS OF SIGN:
Feet Long ..... _____
Feet High ..... X _____
Number of spaces or signs X 1
Total Square Feet..... = 1125
A sign is listed as two spaces when Advertising on both sides

6. TYPE OF SIG
☐ No. 1 Roof
☐ No. 2 Wall
☐ No. 3 Grou
☐ Illuminated

10. SKETCH OF LOCATION IMPORTANT! IF APPLICATION IS FOR A STRUCTURE WHICH WILL CONSTITUTE PART OF A MULTIPLE FACED, BACK TO BACK OR V-TYPE DISPLAY, SHOW DIMENSIONS OF ALL STRUCTURES INVOLVED, BOTH EXISTING AND PROPOSED.

Replacing Appl. # 12194
Atlantic Outdoor Sign Co.
Rm 26 Brdwlk Arcade Bldg.

APPROVED BY: [signature]
DISAPPROVED BY: _____
DATE: 6/6/78

11. ADVERTISEMENT TO BE DISPLAYED IS:

12. ZONING
The property on which the sign will located is zoned for

13. CERTIFICATION NOTE. R.S. 54:52-2 provides that anyone who makes a false affirmation shall be guilty of a misdemeanor.

ENCLOSED IS CHECK ☐ MONEY ORDER ☐ FOR $ _____

In accordance with the provisions of c. 191, L. 1959, as amended and supplemented, and promulgated thereto, I, the undersigned, hereby make application for an Outdoor Advertising permit to erect or maintain an advertisement at the location described. I declare that the information given is true to the best of my knowledge and belief, and that I have the permission of the property owner or his agent to use the property for said purpose. A copy of the owner's written permission is provided to the Outdoor Advertising Section upon request. I agree to maintain the sign in good condition, and I further agree to remove the sign or advertisement upon expiration or revocation of permit, repainting the portion of the building or other structure to the original color, or otherwise completely obliterate the advertisement painted thereon. Trees or other plantlife on highway property will not be trimmed or altered in any way to increase visibility of the sign, and I understand that such alteration or any other violation of the Outdoor Advertising Statutes or Regulations will result in immediate revocation of the permit. The statutory fee is herewith submitted, and in the event my application is denied, I fully understand that this amount will not be refunded.

EXHIBIT P-9

FIFTY ACRES PARCELS 3 & 4, a partn

SIGNED BY [signature]
Herbert Lahn, Secretary of HOOT OWL, INC., Managing Partner

TITLE _____ DATE May 3, 1978

also P-3

EXHIBIT R-2 ID 7-10-90 DMR

Form CA-6 3/84

NEW JERSEY DEPARTMENT OF TRANSPORTATION – APPLICATION FOR OUTDOOR ADVERTISING PERMIT

FOR OFFICE USE ONLY

APP. NO.	YEAR	PERMIT NO.	VIOL. NO.	PROCESS DATE	LATE CHG.	FEE	AMOUNT RECEIVED				DATE
							Fee	Late Chg.	TOTAL	CASH / CHECK / M.O.	
55363	87	15109				Annual / Semi					

SEE INSTRUCTIONS ON REVERSE SIDE BEFORE COMPLETING – FILL IN ALL SPACES BY TYPING OR PRINTING IN INK

1. TRADE NAME WES OUTDOOR ADV. CO.
2. NAME WESLEY K. BELL TEL. NO. 597-3222
3. P.O. ADDRESS 538
4. CITY MANAHAWKIN STATE N.J. ZIP CODE 08050
7. LOCATION OF SIGN Rt. US 30 55 300 ft. E. of DELILAH RD overpass
8. MUNICIPALITY ABESCON 9. COUNTY ATLANTIC M.P.

A sign is listed as two spaces when advertising on both sides

5. DIMENSIONS OF SIGN:
Feet Long 100 ft.
Feet High X 11
Number of spaces or signs X 1
Total Square Feet = 1125
Height of sign supports 1000' per agreement Mr. Bell

6. TYPE OF SIGN:
- ☐ No. 1 Roof
- ☐ No. 2 Wall
- ☒ No. 3 Ground
- ☐ Illuminated
- ☐ Wood
- ☐ Steel

10. SKETCH OF LOCATION IMPORTANT! IF APPLICATION IS FOR A STRUCTURE WHICH WILL CONSTITUTE PART OF A MULTIPLE FACED, BACK TO BACK OR V-TYPE DISPLAY, SHOW DIMENSIONS OF ALL STRUCTURES INVOLVED, BOTH EXISTING AND PROPOSED.

I-54171 (3/10/87 11/9/87)

N

Replacing Appl. #12194
Atlantic Outdoor Sign Co.
and Replacing Permit #15516
appl #47910 of Fifty Acres Parcel 344

APPROVED BY: [signature]

DISAPPROVED BY:

DATE: 3-2-88

ASSIGNED TO Hoyt
DATE 11/9/87

#

11. ADVERTISEMENT TO BE DISPLAYED IS:

12. ZONING
The property on which the sign will be located is zoned for _____ use.

13. CERTIFICATION NOTE: R.S. 54:52-2 provides that anyone who makes a false affirmation shall be guilty of a misdemeanor.

ENCLOSED IS CHECK ☒ MONEY ORDER ☐ FOR $ 125—

In accordance with the provisions of c. 191, L. 1959, as amended and supplemented, and regulations promulgated thereto, I, the undersigned, hereby make application for an Outdoor Advertising Permit to erect or maintain an advertisement at the location described. I declare that the information given is true to the best of my knowledge and belief, and that I have the permission of the property owner or his agent to use the property for said purpose. A copy of the owner's written permission will be provided to the Outdoor Advertising Section upon request. I agree to maintain the sign in a safe and clean condition, and I further agree to remove the sign or advertisement upon expiration or revocation of the permit, repainting the portion of the building or other structure to the original color as necessary, to completely obliterate the advertisement painted thereon. Trees or other plantlife on the right of way will not be trimmed or altered in any way to increase visibility of the sign, and I understand that such alteration or any other violation of the Outdoor Advertising Statutes or Regulations will result in immediate revocation of the permit. The statutory fee is herewith submitted, and in the event that this application is denied, I fully understand that this amount will not be refunded.

Name & Address of Property Owner _____

SIGNED BY Wesley K. Bell

TITLE owner/manager DATE Nov 9th 1987

EXHIBIT R-34

AGREEMENT FOR SALE OF LAND (21)
Sinnickson Chew & Sons Co., Printers of New Jersey
Legal Blanks, Camden 1, N. J.

ARTICLES OF AGREEMENT, *MADE THIS* 17th *day of* August *in the year of our Lord one thousand nine hundred and* Fifty Nine.

BETWEEN **EVELYN ANN OFF AND FRANK S. OFF, her husband, of the City of Linwood, County of Atlantic and State of New Jersey, parties**

of the first part, and **KEND CO., INC., a corporation of New Jersey, party**

of the second part;

WITNESSETH, that the said parties of the first part, for and in consideration of the sum of **THIRTEEN THOUSAND DOLLARS ($13,000.00)**

to be paid and satisfied as hereinafter mentioned and also in consideration of the covenants and agreements hereinafter mentioned, made and entered into by the said party of the second part, do agree to and with the said party of the second part, that **they** *the said par***ties** *of the first part, will well and sufficiently convey to the said party of the second part,* **its successors** *and assigns, by Deed* **of Special Warranty**

free from all incumbrance
except as hereinafter set forth,

on the **1st** *day of* **March, 1960** *all* **that** *lot , tract or parcel of land and premises hereinafter particularly described, situate, lying and being in the* **City** *of* **Absecon** *in the county of* **Atlantic** *and State of* **New Jersey, and more particularly described in the schedule attached hereto, by this reference made a part hereof and marked Exhibit "A".**

EXHIBIT R-36

THIS INDENTURE, *MADE THE* 29th *day of* February, *in the year of our Lord one thousand nine hundred and* sixty

Between EVELYN ANN OFF and FRANK S. OFF, her husband, of the City of Linwood, County of Atlantic and State of New Jersey, parties

of the first part, and

KEND CO., INC., a corporation of New Jersey, party

of the second part;

Witnesseth, *That the said party of the first part, for and in consideration of the sum of* ONE THOUSAND DOLLARS ($1,000.00)

lawful money of the United States of America, and other good and valuable consideration *well and truly paid by the said party of the second part to the said party of the first part, at and before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged* have *granted, bargained, sold, aliened, enfeoffed, released, conveyed and confirmed and by these presents* do *grant, bargain, sell, alien, enfeoff, release, convey and confirm, unto the said party of the second part,*

and assigns,

its successors

ALL that certain lot, tract or parcel of land and premises, situate, lying and being in the City of Absecon, County of Atlantic and State of New Jersey, bounded and described as follows:

BEGINNING at a point 95 feet southwestwardly from the center line of Absecon Boulevard (measured radial thereto) and 8,581.79 feet westwardly from the southwesterly corner of the concrete slab of the State Highway bridge over Newfound Thorofare, (measured along a line 95 feet Southwardly from and parallel and concentric

with the center line of Absecon Blvd.) and extending thence

(1) Northwestwardly and curving to the right along an arc 1241 feet radius and 95 feet southwestwardly (measured radial thereto) from and concentric and parallel with the center line of Absecon Boulevard, the distance of 14.09 feet to a point of reverse curve; thence

(2) Northwestwardly and curving to the left along an arc of 1840.74 feet radius, 95.91 feet; thence

(3) Southwestwardly along a radial line to the aforementioned radius 110 feet; thence

(4) Southeastwardly and making an interior angle with the preceding course of 91 degrees 29 minutes 34 seconds, 105.88 feet to a point 106.8 feet southwestwardly from the beginning point, (measured radial to the center line of Absecon Blvd. as described in the first course); thence

(5) Northeastwardly along said radial line and making an interior angle of 90 degrees 50 minutes 32 seconds, 106.8 feet to the beginning.

BEING the same lands and premises granted and conveyed unto Evelyn Ann Off by Deed from Atlantic City Realty Co., a corporation of New Jersey dated July 27, 1959, and recorded in the Atlantic County Clerk's Office at Mays Landing, New Jersey, on July 28, 1959, in Book 1965 of Deeds, page 264.

Together *with all and singular the improvements, woods, ways, rights, liberties, privileges, hereditaments and appurtenances to the same belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and of every part and parcel thereof;* **And also** *all the estate, right, title, interest, property, possession, claim and demand whatsoever, both in law and equity, of*

the said party of the first part, of, in and to the said premises, and every part thereof, with the appurtenances:

To have and to hold *the said premises above described, with all and singular the hereditaments and appurtenances, unto the said party of the second part,* its successors *and assigns, to the only proper use, benefit and behoof of the said party of the second part* its successors *and assigns forever.*

And *the said party of the first part for* themselves, their heirs, executors and administrators *do by these presents convenant, grant and agree, to and with the said party of the second part,* its successors *and assigns, that* they *the said party of the first part, and* their heirs and assigns *all and singular the hereditaments and premises above described and granted, or mentioned and intended so to be, with the appurtenances, unto the said party of the second part,* its successors *and assigns, against* them *the said party of the first part, and* their heirs and assigns *and against all and every person or persons whomsoever lawfully claiming or to claim the same, or any part thereof,* by, from, through or under her, him, it, them or any of them

shall and will *warrant and forever defend.*

In Witness Whereof, *the said party of the first part to these presents hath hereunto* set their hands and seals

dated the day and year first above written.
SIGNED, SEALED AND DELIVERED)
IN THE PRESENCE OF)

/s/ Kathryn M. Price

/s/ Evelyn Ann Off (SEAL)
Evelyn Ann Off

/s/ Frank S. Off (SEAL)
Frank S. Off

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STATE OF NEW JERSEY)
) ss.
COUNTY OF ATLANTIC)

Be It Remembered, *That on this* 29th *day of* February *in the year of our Lord one thousand nine hundred and* sixty *before me* the subscriber, a Notary Public of New Jersey *personally appeared* Evelyn Ann Off and Frank S. Off, her husband *who; I am satisfied* are *the grantors mentioned in the above deed or conveyance and acknowledged that* they *signed, sealed and delivered the same as* their *act and deed. All of which is hereby certified.*

/s/ Kathryn M. Price

[SEAL]KATHRYN M. PRICE
NOTARY PUBLIC OF NEW JERSEY
MY COMMISSION EXPIRES
JULY 1, 1964.

EXHIBIT R-33

H.G. MYERS & CO.

MORTGAGES * REALTORS * INSURANCE

ATLANTIC CITY, N.J.

SCHWEHM BUILDING
NEW YORK AND ATLANTIC AVENUES

H.G. MYERS — TELEPHONE

WALTER C. MYERS — #3196

AUGUST 18, 1959

MR. MAX MALAMUT
SHELBURNE HOTEL
ATLANTIC CITY, N.J.

DEAR MAX:

ENCLOSED PLEASE FIND COPY OF AGREEMENT BETWEEN EVELYN ANN OFF AND FRANK S. OFF AND KEND CO. FOR THE PURCHASE OF THE SHELBURNE SIGN AND ALSO AGREEMENT BETWEEN THE SAME PARTIES FOR THE PURCHASE OF THE JAMES SIGN.

I HAVE ADVISED MR. GRAVATT THAT YOU WANT POSSESSION OF THE JAMES SIGN AS OF FEBRUARY 1, 1960 AND IN THE EVENT YOU WANT IT AT AN EARLIER DATE, PLEASE LET EITHER MR. GRAVATT OR MYSELF KNOW.

I AM ALSO ENCLOSING LETTER ADDRESSED TO KEND CO. DATED AUGUST 14TH, SIGNED BY FRANK P. GRAVATT, PRESIDENT OF ATLANTIC CITY REALTY CO., GUARANTEEING THAT NO BUILDINGS, ETC., WILL BE ERECTED ON THE WEST SIDE OF THE SHELBURNE SIGN.

I AM TURNING OVER TO MURRAY FREDERICKS, YOUR ATTORNEY, UNSIGNED COPIES OF EACH AGREEMENT, TWO SURVEYS, ONE

COVERING EACH OF THE ABOVE SIGNS, AND A COPY OF THE JAMES LEASE.

SINCERELY YOURS,

/S/ H.G. MYERS

HGM:EJM
ENC.

A No.

Q Can you tell what the height of the sign is from looking at this location?

A No.

Q You don't know how high the sign was at that location?

A No.

MR. GERBER: I don't have any further questions, your Honor.

MR. ROBERTSON: No redirect, your Honor.

(Witness excused.)

MR. ROBERTSON: Mr. Thomas please.

THOMAS WOOD, JR., sworn.

DIRECT EXAMINATION BY MR. ROBERTSON:

Q Mr. Wood, are you employed?

A No, I'm not. I'm retired at the present time.

Q When you were employed, how were you employed?

A I had an engineering in surveying firm in Atlantic County.

Q Are you licensed by any state as a land surveyor?

A I'm licensed in the State of New Jersey as a [p. 162] professional engineer and a land surveyor.

Q Since what date, sir?

A 1953.

Q Have you held any positions of employment with public entities as a land surveyor or engineer?

A I held the position as municipal engineer for a number of municipalities.

Q In Atlantic County?

A Yes.

Q Did you have occasion on about July 21, 1959 to conduct a survey of property in Absecon, New Jersey?

A The property that we've been talking about, yes.

Q I show you what's been marked P-29 for identification. Did you prepare the original of this document?

A It was prepared in my office, yes.

Q Did you participate or supervise this preparation?

A Yes.

Q Did you do any of the field work yourself?

A I'm quite sure that I was in the field party – with the field party when this was done.

Q Is it P-29? Is that in your handwriting, sir?

[p. 163] A This drawing?

Q Yes.

A No, I don't think so.

Q Do you know who it was drawn by?

A Someone in my office. No, I wouldn't know who that is.

THE COURT: Did you say P-29?

MR. GERBER: R-29, he meant.

Q I'm sorry. R-29, it was drawn, nevertheless, under your supervision?

A Yes.

Q Now, does R-29 – well, first of all, R-29 is a survey of property which in 1959 was denominated as Lot 8; is that correct?

A I think it's Lot 8.

Q Lot 8. I'm sorry.

A Yes, a portion of it.

Q A portion of Lot 8, and it is adjacent to something called Absecon Boulevard?

A Yes.

Q Is Absecon Boulevard also known as Route 30?

A Yes, it is.

Q Now, was this piece of property somewhat east of the Delilah Road Overpass?

[p. 164] A Yes.

Q Is any corner of the property located with reference to some fixed point?

A Yes, the beginning point on the property refers to a corner of a concrete slab of the highway department bridge over new Road Thoroughfare. It's 6,581, 7900 feet west from that slab.

THE COURT: Okay. I have a problem. I can't read that clearly. Where's the original of this?

THE WITNESS: I have no idea.

THE COURT: Did you get this from your own office records?

THE WITNESS: No, I did not.

THE COURT: How do you know it was the one that your people did?

THE WITNESS: Well, it's either that or a counterfeit, ma'am.

THE COURT: Okay. Fair enough. So that is what your reading?

THE WITNESS: Yes.

THE COURT: And what does it say?

THE WITNESS: Six or 8,581.79 feet west of the corner of concrete slab of the State highway department bridge over New [p. 165] Road Thoroughfare.

THE COURT: Thank you.

Q Mr. Wood, have you known anyone to have ever counterfeited a survey?

A No, this was my letterhead and my phone number at the time.

Q Did you have a specific recollection of having supervised the preparation of that?

A Yes, I remember being out there.

Q Was the survey which you have in your hand, was that the final product – is that a copy of the final product?

A Yes, the Court referred to a certified survey. This was what we call a sketch map at the time, and it wasn't to be used for any title purposes. It may have been just to show the owner where the land was in relation or the sign was in relation to the land or even to prepare a description of the particular land that the sign is on.

Q Were sketch maps in common usage in 1959?

A Yes, when we laid out a lot or something for a builder, that's all we furnished them.

Q Now, when you prepare a sketch map or a survey or when you prepared one in about 1959, was it a common practice to utilize a deed description as an aid [p. 166] to locating the property?

A Oh, it was essential.

Q I show you what's been marked R-36, a deed made February 29, 1960. Have you seen the original of this document before?

A I don't think so. It was a long time ago.

Q Do you know if R-29, your July 21, 1959 survey was prepared in connection with the transfer between Evelyn, Frank Oft to Kendco Inc.?

MR. GERBER: Objection, your Honor. He's testified he doesn't know if he recalls this document R-36.

THE COURT: Well, he said he didn't think he'd seen it.

MR. ROBERTSON: I didn't ask him about the document, I asked him if he prepared the survey in connection with the contemplated survey.

MR. GERBER: If he can't recognize the document, how can he do that?

MR. ROBERTSON: He can know about a contemplated survey without remembering a document.

MR. GERBER: 1959.

Q If you recall, sir?

[p. 167] A Well, the beginning point and the description, the meets and bounds and description of the lot are the same now. It would have been either the description could have been prepared from this, or we had a copy of this description when we did the survey. Either one, I don't know which was first.

Q All right. The notation you just read while referring to your survey R-29, 8,581.79 feet west from corner of concrete slab of State highway department bridge over New Road Thoroughfare coincides with the description in that deed R-36 with the beginning point; does it not?

A Yes, it does.

Q And description in R-36 of the meets and bounds description is precisely the same as that in your survey; is it not?

A Yes, it is.

Q Now, have you had occasion to compare your survey with survey prepared by Mr. Shilling which has been identified as R-28?

A No, I have not.

Q Have you had occasion to prepare your survey with the survey prepared by Mr. Thomas identified as P-4C?

A I have not.

[p. 168] Q Would you take a moment to do that, and tell me if your survey and P-4C described the same piece of property?

THE COURT: I'd like to see the original of this.

MR. ROBERTSON: I think we only have a copy, your Honor.

THE COURT: There has to be an original somewhere.

MR. BELL: The title company has one that's faded out. It's made photocopy. It's made by the title company from what they have in the records.

THE COURT: They made it and sent it to you?

MR. BELL: They made and physically went through files and they gave it to me.

THE COURT: Okay.

THE WITNESS: Apparently, it seems the same parcel of property as this small piece that's shown here.

Q Now, would you do the same thing with respect to Mr. Shilling's survey marked R-28?

A Well, the dimension of the lot is that it equals tract two on his survey R-28 and is the same as shown [p. 169] on my sketch map, but he doesn't show any – I don't see any definite beginning point tied into this slab. He just shows an arrow to the beginning of tract two. So there's no way to locate it longitudinally along the right of way of Absecon Boulevard or Route 30.

Q You cannot relate your beginning point to any fixed point on Mr. Shilling's survey R-28? They do show lots exactly the same size; is that correct?

A Yes, and the only thing on here that is the same is this point of reverse curve which is 14.09 feet from this easterly corner, the north/easterly corner which, you know, would indicate they're the same location but, of course –

Q Now, when you surveyed the property, did there exist a billboard on the property?

A Yes.

Q And, in fact, you show a schematic of the billboard; do you not?

A Yes, we show it on this sketch.

Q And do you recall how long the billboard was?

A I don't recall, but we just scaled it off as shown here as 105, approximately 105 feet.

Q Now, did the billboard have any kind of advertising on it at the time?

[p. 170] A I have known this James Saltwater Taffy billboard.

Q Now, Mr. Shilling, on his survey R-28, also shows an area where there are the remains of posts for a billboard?

A Yes.

Q Is that an area oriented in approximately the same manner and approximately the same place on the property as you show the billboard for the James Saltwater Taffy?

MR. GERBER: Your Honor, I'm going to object to that question. He's testified he can't for sure say the description of the property shown in R-29 is the same as the one shown on R-28.

MR. ROBERTSON: I'm just asking him if the two billboards and remains of billboards are oriented in approximately the same place and approximately in the same direction.

THE COURT: That's all right.

MR. GERBER: On two surveys of two which he cannot reconcile being the same. That's the question you're asking. I have an objection for that. I think it should

* * *

[p. 177] that photo as new Road Thoroughfare just east of Delilah. Yeah, that's it. I'm sure.

THE COURT: Where is the bridge over Thoroughfare Road or New Road?

THE WITNESS: It's back this way to the east.

THE COURT: All that way?

THE WITNESS: Yes, over 8,000 feet.

Q Now, assuming, Mr. Wood, that the Shilling survey, your survey and P-4C, the survey of Mr. Thomas, all depict the same property, are the billboards or remains of billboards or pilings oriented in about the same direction and in about the same place relative to the property lines?

MR. GERBER: Your Honor, I want to make an objection. That assumption is in light of the fact that Mr. Wood has not been able to rectify all of these three surveys are all of the same property.

MR. ROBERTSON: I hardly – I think I can assume a fact not in evidence because Mr. Rafferty testified they all depicted the same property, and he explained how he reached that description.

[p. 178] MR. GERBER: Mr. Wood, who actually did the survey in R-29, I think the question should be clarified to the record.

THE WITNESS: The Thomas made it's actually the same description we had on ours. The only one on the Shilling survey, there's no beginning point shown on it that would tie it in. It's exactly the same dimensions, and it's the same distance from a point reverse curb to one of the property lines, but there's no beginning point.

MR. GERBER: There's no common starting point for all these surveys.

THE WITNESS: The Thomas survey is the same as mine.

THE COURT: The point of reverse would describe to me what he said it adds up to the same. It's the same property.

MR. ROBERTSON: Would the reporter please read back my question?

(The requested portion was read by the reporter.)

A Yes, they are oriented in the same direction, [p. 179] and they all appear to be fairly nearly the same distance for all four property lines.

Q One or two more questions. Do you live in Atlantic County, sir?

A Yes, Egg Harbor City.

Q And have you lived in Atlantic County since before you performed that survey?

A Yes.

Q Have you had occasion to drive in the neighborhood of the Delilah Road Overpass on Absecon Boulevard or Route U.S. 30 in the last – well, since about 1959?

A Well, yes. Often I commuted to Atlantic City for years.

Q Do you have any specific recollection of ever having seen a sign since 1959 between the Delilah Road Overpass and the sign that you depicted on R-29?

A I certainly don't have any recollection, no.

MR. ROBERTSON: Thank you.

MR. GERBER: Could we have that last question and answer read back please?

(The requested portion was read by the reporter.)

MR. ROBERTSON: I have one or two more questions.

[p. 180] Q At the time you conducted your survey, the sign displayed an advertising message for James Saltwater Taffy?

A That's correct.

Q As you indicated on your survey, do you recall any other advertising messages displayed on that sign since that time?

A No, I do not.

MR. ROBERTSON: Thank you. I have no further questions.

CROSS-EXAMINATION BY MR. GERBER:

Q Mr. Wood, just a couple of questions. You say you had no recollection of a sign between the sign you depicted on R-29 and the Delilah Road Overpass?

A Uh-hum.

Q You say you have no recollection one way or the other if there is a sign depicted on R-29 and Delilah Road Overpass?

A Would you repeat the last part of it?

Q You don't have a recollection one way or the other whether there was a sign or wasn't a sign there?

A No, I do not.

Q You can't say whether there was a sign or [p. 181] was not a sign?

A No, I can't.

Q And can you say whether or not there was a saltwater taffy sign advertised as the location depicted on R-29 as well as other locations along Route 30 in Absecon?

A No, I can't.

Q You have no recollection one way or the other?

A No, there's note on my sketch map, you know, it refreshed my recollection.

Q As to that location?

A Yes.

Q But as to the other location, you have no recollection one way or the other?

A No.

MR. GERBER: No further questions.

MR. ROBERTSON: No redirect.

THE COURT: Okay.

MR. ROBERTSON: Thank you, Mr. Wood.

(Witness excused.)

MR. ROBERTSON: Your Honor, may I have just about 45 seconds with my next witness?

THE COURT: All right. Off the

* * *

[p. 140] WILLIAM J. RAFFERTY, sworn.

DIRECT EXAMINATION BY MR. ROBERTSON:

Q Mr. Rafferty, by whom are you employed?

A I'm employed by an engineering firm, P-a-n-n-o-n-i Associates.

Q And are you, in fact, an engineer?

A Yes, I am.

Q Do you have any licenses from the State of New Jersey?

A Yes, I'm a licensed engineer in the State and have been since 1977.

Q Do you have any other state licenses?

A Yes, I was licensed in Maryland in '75 and in Pennsylvania in '85.

Q And have you been continuously employed in the engineering profession ever since?

A Yes.

Q Have you had any positions of employment with public entities?

A Yes, I started, in fact, my very first job after getting out of school was then called the New Jersey Highway Department, now called the DOT. I was also for three and a half years county engineer in Cumberland County, and I was for four years county engineer in Atlantic County, New Jersey.

[p. 141] Q Are you also licensed as a surveyor?

A No.

Q In the performance of your responsibilities as an engineer, is it necessary for you from time to time to utilize the product of licensed surveyors?

A Yes, it is.

Q Are you familiar with Route 30 in Atlantic County east of the Delilah Road Overpass?

A Yes, I am.

Q And have you recently examined surveys and photographs of property in that vicinity?

A Yes, I have.

Q I'd like to show you a number of documents. I'm sorry. R-29 being a survey, a copy of a survey, and not very good one at that, dated July 29, 1959 performed by Thomas Wood.

P-4C being a survey performed by Charles W. Thomas dated September 30, 1987 and revised on three occasions, the latest of which was August 17, 1989.

THE COURT: R-29. What was the second one?

MR. ROBERTSON: P-4C.

THE COURT: Is that it?

MR. ROBERTSON: A series of [p. 142] photographs which have been marked R-31A, B, C, D and E, depicting the property in the vicinity of Route 30 and Delilah Road Overpass.

MR. GERBER: Let me see those pictures.

THE COURT: All right. I have a problem with R-29. This has no seal. It has no certification in the bottom. No date. No nothing. It cannot be used as a survey. If you got the original and it's got the proper things on it, then maybe we can look at it, the date, the seal.

MR. ROBERTSON: Excuse me. We're talking about Mr. Thomas' survey.

THE COURT: The piece of paper I have in here.

MR. BELL: He's here and will be testifying to that after he testifies to it.

THE COURT: Well, he can't testify about this unless it really is a survey, and you've got to prove it's a survey.

MR. BELL: He'll testify to that.

THE COURT: He's testifying now. He [p. 143] wants to apparently use it as an expert witness. You can't do that unless you show me it's a valid survey.

MR. ROBERTSON: Mr. Thomas will testify that is a survey.

THE COURT: I want to see the piece of paper it was a certification, to whom it was certified, and in the proper certification. You can ask him what you want, but it won't meaning anything. I don't want somebody's recollection what he did. I want the actual physical documents that you need if you were going to give it to a title insurance company that you would need to determine something.

MR. ROBERTSON: Your Honor, if I may explain. R, is it, 29?

MR. GERBER: Yes.

MR. ROBERTSON: Was obtained from the records of Chelsea Title Insurance Company, more accurately, was obtained from the records of the successor of Chelsea Title Insurance Company and was prepared in connection with Chelsea's issuance of a title commitment for that [p.144] piece of property in question. I do not believe that there is in existence –

THE COURT: For which existing property, the one that belongs to the respondent?

MR. ROBERTSON: That's correct.

THE COURT: That particular piece?

MR. ROBERTSON: That's correct. I do not believe there is in existence or at least available to us a survey with a raised seal. However, we do have the surveyor who prepared the survey in Court to testify with respect to his work product.

THE COURT: Go ahead, but I'm telling you this isn't going to mean much, and I don't know if the rest will either.

Q Now, I'd also like to direct your attention to an aerial photograph approximately 38 feet by 38 feet in black and white marked R-31F and pair of surveys by Mr. George Shilling, one of which has been marked R-28 yesterday, and the second of which I'd ask the court reporter to mark R-28A.

(Survey was received and marked R-28A for identification.)

[p. 145] THE COURT: Excuse me. I don't see a list of R-28. I do have a survey for Fifty Acres, but I don't believe I ever had it marked.

MR. ROBERTSON: Well, if it wasn't, I ask that we mark a copy, the one the witness has in his hand is R-28A also prepared by Mr. Shilling of an adjoining piece of property. If my recollection serves me, Mr. Lahn identified R-28 as being survey prepared by Mr. Shilling in connection with his purchase of the property surrounding that of Mr. Bell.

THE COURT: It does say Fifty Acres survey. I have that listed. Is that 1978?

THE WITNESS: Correct.

MR. ROBERTSON: That's correct. If I may provide the Court with a copy of R-28A.

MR. GERBER: Mr. Robertson, these photographs 31B, C – 31A through E, what year are these photographs?

MR. ROBERTSON: I believe they're 1989.

[p. 146] MR. BELL: 1989, I'll give the exact date.

MR. ROBERTSON: We'll have Mr. Bell authenticate them. He's the person who took them.

MR. BELL: They were taken August 23, 1989.

THE COURT: With respect to this R-28A, it says Lot 299, Block 201.

MR. NORTON: This is a half mile down from the existing sign, your Honor.

THE COURT: Why am I looking at this then? In other words, I'm not being able to identify this to what we're talking about.

THE WITNESS: That remains to be seen, but the sign in question, your Honor, is up here.

THE COURT: All right. So then I've never seen this before. I've never seen this area location on any of the maps?

MR. GERBER: That's correct, your Honor.

MR. ROBERTSON: The Court has heard testimony with respect to it. It's [p. 147] included in the parcel that was deeded to Fifty Acres Parcels 3 and 4.

THE COURT: I'm really not interested in this piece of land. I have no interest in it whatsoever to the best of my knowledge.

MR. ROBERTSON: It's not the land we're going to be concerned with, it's when we refer to it, its billboards on the land and what was displayed.

THE COURT: I can't understand any reason I would be concerned with the billboards that was displayed on the billboards after a mile up the road?

MR. ROBERTSON: There was testimony with billboards, James Saltwater Taffy and Mount Royal in various locations property owned by Mr. Bell and property owned by Fifty Acres Parcels 3 and 4 and parcels against Route 30, and I believe it will be apparent to the Court why it has some relevance when Mr. Bell testifies.

THE COURT: Is the State aware of where this is going?

MR. GERBER: Your Honor, I believe I [p. 148] understand it. I don't agree with it. I think it's irrelevant.

THE COURT: If you can do it quickly, all right, because I can see no relevancy whatsoever, and it gets pretty difficult to allow a lot of things on the basis at some point in time which will be apparently after several witnesses; that is, someone is going to make it relevant. So we can go on a while with stuff like this. I'd appreciate if you tie it in very tightly.

Q Now, Mr. Rafferty, please refer to the survey prepared by Mr. Thomas P-4C. Does it appear that the property is located by reference to at least in part some sort of utility pole?

MR. GERBER: Could you wait a second until I get P-4C. Thank you.

Q Do you find the utility pole that's utilized to at least in part locate the property in question?

A Yes, I do.

Q Now, is it common practice in land surveying and in engineering to utilize utility poles as an aid in locating property?

[p. 149] A It's fairly common. It's not the determinant, but if the pole is there, you're well advised to pick it up and show it on your drawing.

Q Because poles can be moved from time to time; the numbers can be changed; they can be damaged; they can be removed altogether?

A Yes.

Q In locating utility poles it is common practice when they're used to utilize Exhibits such as R-30 for identification?

A Yes, very definitely.

Q Why don't you hang onto that for the time being.

A Okay.

Q Now, Mr. Rafferty, you were asked by Mr. Bell to review these documents and make certain determinations. In particular, you were asked to determine whether the billboard sign, the pilings of which are shown on the survey prepared by Mr. –

A Mr. Thomas.

Q – is in the same location as what appears to be billboard pilings shown on R-28, a survey prepared by Mr. Shilling?

A Mr. Shilling, yes.

Q And is also in the same location as the [p. 150] schematic of a billboard shown on R-29 of survey prepared by Mr. Thomas and is also shown on the aerial photograph 31F and also to compare 31F with the photographs taken by Mr. Bell; were you not?

A Yes, that's correct.

Q Now, did you come to any conclusions as a result of your efforts?

A Yes, we did.

Q And could you tell us what those conclusions are and how you reached them?

A Okay. We found substantial agreement amongst the Shilling survey, the Charles Thomas survey, the Thomas Wood survey, and the aerial photograph, and that was achieved by we, as Mr. Conover will tell you later, we today reserve a – we being Pannoni Associates, and found complement agreement amongst all of these documents.

Q Did you find any reason to doubt that the billboards shown on the various surveys and in the photographs was in a location any different?

A No, we did not.

Q Now, referring in particular to the aerial photograph R-31F, can you with a reasonable degree of engineering certainty locate anything that appears in that photograph to be a billboard on Mr. Bell's [p. 151] property as it stands today?

A Yes, we can.

Q Would you go to the Exhibit and explain to us how you would do that?

A Sure. You start out with the knowledge that you gleaned on the ground, the review of the other surveys, and the survey we performed ourselves. This is an aerial photograph which we determined to be at a scale of one inch equals 100 feet.

Q And how did you determine that?

A Because there is a couple of known features here. This is a motel which is still standing in the same configuration that it was. We physically went out and measured the motel on the ground and that was how we determined the scale of the drawing.

Q So you compared the dimension as they appear on the photograph with the dimensions that you measured and arrived at a scale?

A That's correct. Now, from that, we were able to determine that this heavy blackout line which is at approximately where the eastbound lane of Delilah Road joins the eastbound lane of Route 30 is the billboard in question.

Q Now, do you see anything on that photograph that appears to be a billboard between the [p. 152] billboard you've just pointed out and the Delilah Road Overpass?

A No, I do not.

Q Now, there are a number of diagonal lines depicted in the vicinity of the billboard in question; are they not?

A Yes, they are.

Q And do you know what those are?

A If you're referring to these straight lines, yes, those are drainage ditches dug from mosquito control purposes in the swamp.

Q Now, do those drainage ditches appear on Mr. Shilling's survey?

A Yes, they do.

Q Now, by comparing the Exhibit R-31F with Mr. Shilling's survey and with particular reference to the mosquito ditches –

THE COURT: Wait a minute. What is Mr. Shilling's?

THE WITNESS: It's R-28, your Honor. It has a big number four in the right lower corner.

MR. ROBERTSON: Let me supply the Court with a copy.

Q Now, with reference to Mr. Shilling's [p. 153] survey and the aerial photograph, can you tell us how you can conclude that the billboard depicted in Mr. Shilling's survey is in the same location as the billboard depicted on the photograph?

A Because the survey on the ground concluded that, which we accomplished just in the last few days, led us to conclude that this is, in fact, the billboard in question. It was a series of physical measurements from the beginning point of the property.

Q Did you make any comparison with respect to the billboard locations as shown on Mr. Shilling's survey and the aerial photographs?

A Yes.

Q And did you utilize the mosquito ditches in order to do that?

A Yes, we did.

Q Could you use both Exhibits to show us how you concluded that the two Exhibits depict the same billboard in the same location?

A Well, basically, how you do it, the survey which is known as R-28 which has the big number four in the lower right-hand corner is drawn at a known scale. In this case, the scale is one inch equals 60 feet. We know what the scale of this aerial photograph number R-31 is. It's one inch equals 100 feet. By scaling [p. 154] the physical feature shown on the survey and comparing them to the photograph or vice versa, scaling physical features on the photograph and comparing them to the survey, we've found complement agreement.

Q Now, with respect to the photographs that Mr. Bell took –

A The color photographs?

Q Yes, the color photographs.

THE COURT: Wait a second here. I think I'm sort of confused. This showing that I have in front of me is 28.

THE WITNESS: 28. I had to be precise.

THE COURT: This is 28.

THE WITNESS: Yes, ma'am.

THE COURT: That was last revised in 1978?

THE WITNESS: Yes.

THE COURT: And who was this done for or where did this come from?

MR. ROBERTSON: Mr. Lahn identified it yesterday. It was done with his request in connection with Fifty Acres Parcels 3 and 4 with the property described in that survey.

[p. 155] THE COURT: This is the same one that he had identified? It doesn't look like it to me.

MR. ROBERTSON: The actual document that Mr. Lahn utilized.

THE COURT: I don't believe this is the same one I saw.

MR. ROBERTSON: You can compare them.

MR. GERBER: That's the same one, your Honor.

THE COURT: Okay.

Q Now, with reference to the several color photographs that were also marked as an Exhibit, each of them depicts a billboard sign; does it not?

A Yes, that's correct.

Q And it appears to depict the same area as is depicted by the aerial photograph R-31F. Now, did you make any comparison between the five color photographs and R-31F to determine whether the billboard depicted in the color photographs is in the same location as the billboard that you earlier identified on R-31F?

A Yes, we did.

Q Okay. And how did you make that [p. 156] comparison?

A By comparing the configuration of the ditches. Now, I have to point out that these are at an unknown

scale and are also taken at an oblique angle. By that, I mean less than shooting straight down. So you cannot scale off of these the same that you can off a map or off an aerial photograph such as R-31. So we did not use scaling on these. What these did is clearly show what the number of the general configuration in the drainage ditches, and there was complement agreement between these photographs and the Shilling survey which is R-28, and we found generally complement agreement.

Q Did you also find the same quality of agreement between the photographs and the black and white aerial photographs?

A Yes.

Q So the billboard depicted in all of the photographs and shown on the Shilling survey is in the precise same location?

A Yes.

Q Just one or two more questions, Mr. Rafferty.

A Sure.

Q Do you have any relationship with Mr. Shilling or Mr. Shilling's office?

[p. 157] A No, we bought the business from Mr. Shilling, if that's a relationship, in the fall of '79. We purchased the business from him. He is not associated with it anymore.

Q When you purchased the business, did you also purchase along with it his records?

A Yes, that's correct.

Q And would those records include R-28 and R-28A, the two Shilling surveys?

A Yes, that's correct.

Q Thank you very much.

A Okay. Thank you.

CROSS-EXAMINATION BY MR. GERBER:

Q Mr. Rafferty, are you aware of how long this sign has existed as shown on R-31F?

A How long the sign has existed? Well, I don't know when R-31F was taken. So I can tell you it was taken before 1982, but I can't –

Q Okay. you've identified that you looked at these pictures 31A through, I guess it's E.

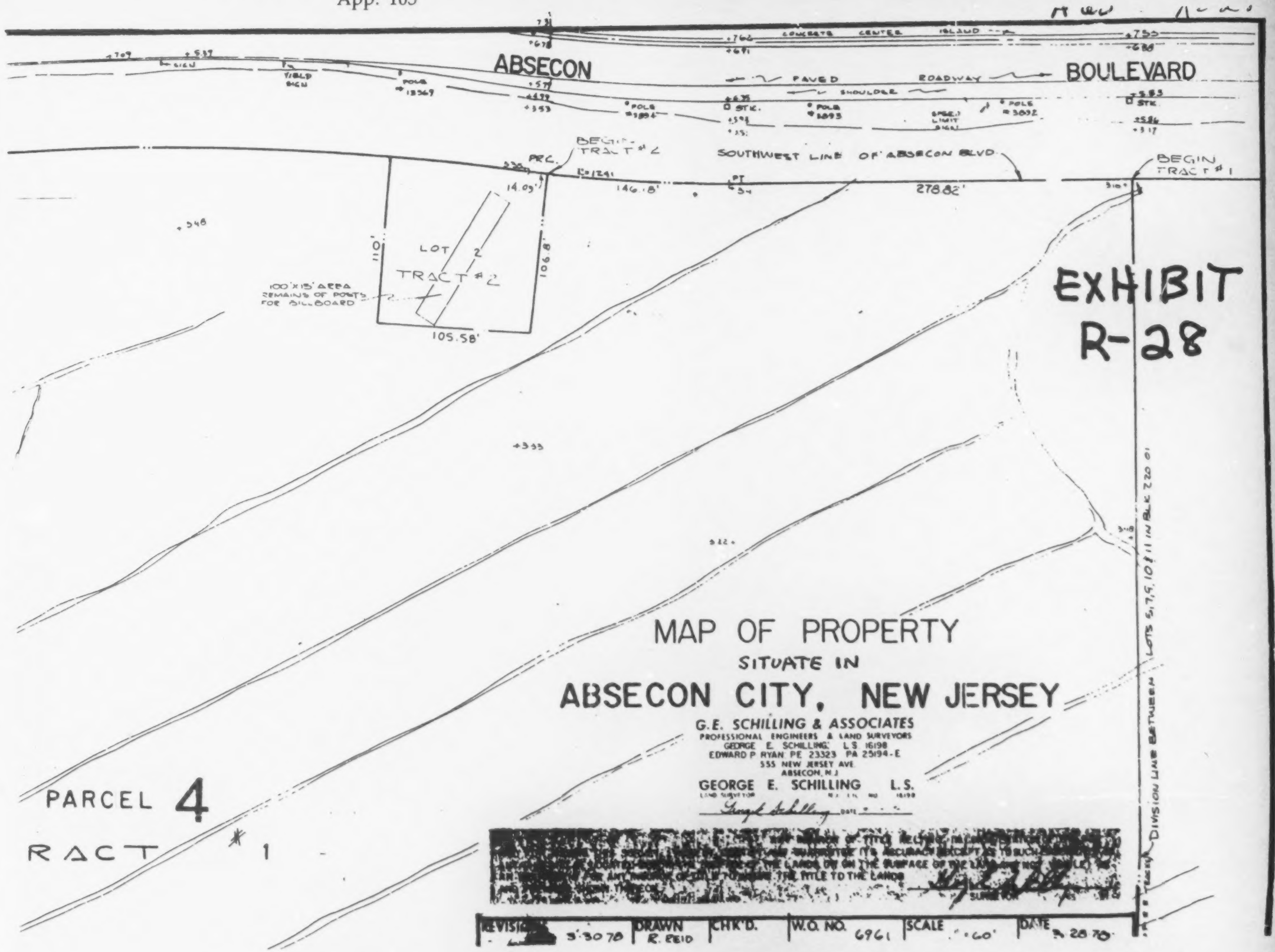
A Whatever.

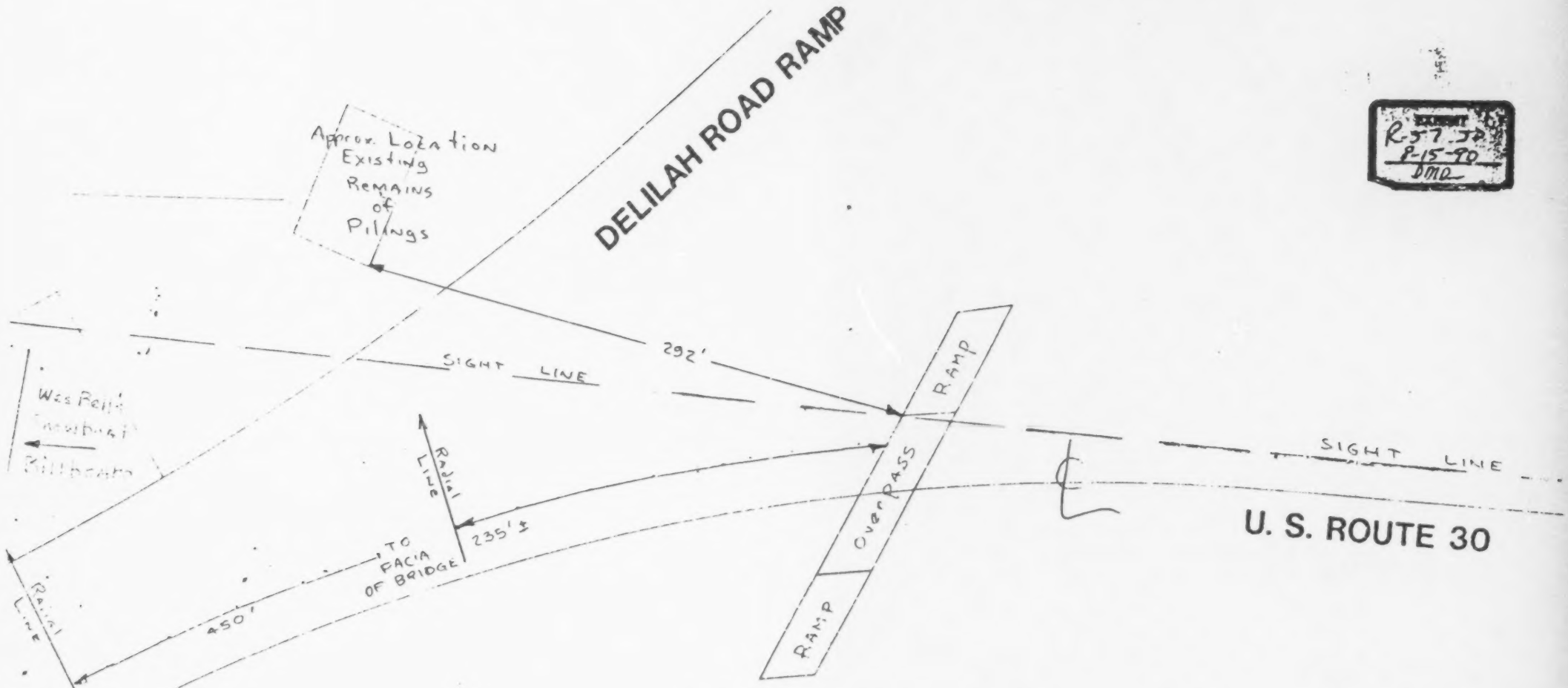
Q A through E.

A Uh-hum.

Q And you said that the sign on 31 shown on

* * *


ABSECON BOULEVARD
PAVED ROADWAY
SHOULDER
CONCRETE CENTER ISLAND
SOUTHWEST LINE OF ABSECON BLVD.
BEGIN TRACT #2
BEGIN TRACT #1
PRC.
PT
14.03'
146.18'
278.82'
LOT 2
TRACT #2
106.8'
105.58'
100'x15' AREA REMAINS OF POSTS FOR BILLBOARD
EXHIBIT
R-28
MAP OF PROPERTY
SITUATE IN
ABSECON CITY, NEW JERSEY
G.E. SCHILLING & ASSOCIATES
PROFESSIONAL ENGINEERS & LAND SURVEYORS
GEORGE E. SCHILLING L.S. 16198
EDWARD P RYAN PE 23323 PA 25194-E
555 NEW JERSEY AVE
ABSECON, N.J.
GEORGE E. SCHILLING L.S.
PARCEL 4
RACT #1
REVISED 3-30-70
DRAWN R. REID
CHK'D.
W.O. NO. 6961
SCALE 1"=60'
DATE 2-28-70
DIVISION LINE BETWEEN LOTS 5, 7, 9, 10 & 11 IN BLK 22 (1)



R-57 JP 8-15-90 DMD

Pennoni Associates Inc. 515 Grove St Haddon Heights, N.J. 08035 Engineers • Surveyors • Planners

S101

Delilah Road Ramp
Absecon City, Atlantic County, New Jersey
Sight Line Drawing
Wes Outdoor Advertising
P. O. Box 538
Mount Laurel, New Jersey

ALL DIMENSIONS MUST BE VERIFIED BY CONTRACTOR AND OWNER MUST BE NOTIFIED OF ANY DISCREPANCIES BEFORE PROCEEDING WITH THE WORK

William J. Rafferty
Professional Engineer
8/1/90

DATE	NO	REVISIONS	BY

NEW JERSEY SIGN INVENTORY JAN. 24, 1966 TO MARCH 11, 1966

EXHIBIT R-18 II 7-10-9 SMK

CITY	DIR	RD. SEC NO.	SIGN NO.	MI.FRM BEG OF SECT.	I OR FAP CLASS	ADT IN (100)	LAND USE	DIST FROM ROW	SIGN ILLM	SIGN SIZE H	SIGN SIZE V	HT	SHAP	MAT	CON	OWNER OF SIGN	SIGN LEGEND
0000	E	181		.00	5												BEGIN SECTION 181
0005	E	181		.00	5												ABSECON
0005	E	181	1	.39	5	133	3	015L	N	10	6	14	R	C	G		U S SAVINGS BONDS
0005	E	181	2	.39	5	133	3	015L	N	10	6	14	R	C	G		SCHMIDTS BEER
0005	E	181	3	.39	5	133	3	015L	Y	30	5	25	O	C	G		ZABERERS
0005	E	181		.44	5												BEGIN DIVIDED HIGHWAY
0005	E	181	4	.50	5	133	3	125R	N	25	12	18	R	C	G	MAXWELL	STATE FARM INSURANCE
0005	E	181	5	.50	5	133	3	125R	N	25	12	18	R	C	G	MAXWELL	MISTER BIG
0005	E	181	6	.58	5	133	3	150R	N	30	4	18	R	O	G		SMITHVILLE INN
0005	E	181	7	.61	5	133	3	015R	Y	30	12	18	R	C	G	MAXWELL	GOLDEN GATE MOTEL
0005	E	181	8	.70	5	133	3	005R	N	8	6	10	R	C	G	3 M NATIONAL	NATIONWIDE INSURANCE
0005	E	181	9	.70	5	133	3	015R	N	10	8	10	R	C	G	3 M NATIONAL	SHORE MOTOR CLUB
0005	E	181	10	.70	5	133	3	025R	N	10	6	10	R	C	G	3 M NATIONAL	MCDONALDS HAMBURGERS
0005	E	181	11	.79	5	133	3	020R	Y	25	12	16	R	C	G	MAXWELL	NO LEGEND
0005	E	181	12	.79	5	133	3	020R	Y	50	16	18	R	C	G	MAXWELL	SMITHVILLE INN
0005	E	181	13	.81	5	133	3	020R	Y	50	16	20	R	C	G	MAXWELL	THE CLARIDGE
0005	E	181	14	1.41	5	133	3	035R	Y	25	12	18	R	C	G	MAXWELL	ATLANTIC CITY ELEC
0005	E	181	15	1.41	5	133	3	035R	N	25	12	18	R	C	G	MAXWELL	ALLSTATE INSURANCE
0005	E	181	16	1.50	5	133	3	025R	Y	25	12	18	R	C	G	MAXWELL	GARWOOD
0005	E	181	17	1.50	5	133	3	025R	N	25	12	18	R	C	G	MAXWELL	PHILLIPS 66
0005	E	181	18	1.71	5	133	3	025R	Y	25	12	18	R	C	G	MAXWELL	CHRISTMAS SEALS
0005	E	181	19	1.71	5	133	3	060R	Y	25	12	18	R	C	G	MAXWELL	LAFAYETTE MOTOR INN
0005	E	181	20	1.88	5	133	3	050R	N	25	12	18	R	C	P	SHORE SIGN	SPECIALTY MOTORS
0005	E	181	21	1.88	5	133	3	080R	N	25	12	18	R	C	P	SHORE SIGN	NO LEGEND
0005	E	181	22	1.98	5	133	3	035R	Y	30	12	18	R	C	F	SHORE SIGN	STEEL PIER
0005	E	181	23	1.98	5	133	3	075R	Y	30	12	18	R	C	F	SHORE SIGN	NO LEGEND
0005	E	181	24	2.57	5	133	3	150R	N	25	12	18	R	C	G		BOARDWALK BOWL
0005	E	181	25	2.57	5	133	3	150R	N	25	12	18	R	C	G		WFPG
0075	E	181		2.70	5												ATLANTIC CITY
0075	E	181	26	2.79	5	133	3	025R	Y	80	16	20	R	C	G	ATLAN OUTDR	MT ROYAL MOTEL
0075	E	181	27	2.83	5	133	3	100R	Y	99	30	35	O	C	G		STEEL PIER
0075	E	181	28	2.90	5	133	3	030R	N	20	12	18	R	C	G		AQUARAMA
0075	E	181	29	2.90	5	133	3	060R	N	50	12	18	R	C	G		STEEL PIER
0075	E	181	30	2.90	5	133	3	150R	N	20	12	18	R	C	G		BOARDWALK BOWL
0075	E	181	31	2.92	5	133	3	060R	N	40	12	18	R	C	G		STEEL PIER DIV HORSE
0075	E	181	32	3.02	5	133	3	050R	Y	40	16	24	R	C	G	MAXWELL	COPPER KETTLE FUDGE
0075	E	181	33	3.02	5	133	3	050R	N	25	12	15	R	C	G	MAXWELL	66 IMPALA
0075	E	181	34	3.02	5	133	3	075R	N	25	12	16	R	C	G	MAXWELL	NO LEGEND

R-18

Cross – Lloyd

[p. 71] Q So you have to make us aware of whether there are other permitted locations in the vicinity; is that correct?

A Yes.

Q And then you have to make a determination as to whether the proposed location is within or without the prescribed distance; is that correct?

A Try to.

Q Now, how do you ordinarily determine whether the permitted location is about reference to a fixed point? If that becomes necessary, do you measure it?

A Yes.

Q With a tape measure, with a wheel, do you estimate?

A I currently have a wheel.

Q In 1986 say, did you have a wheel then?

A I had a tape, 100 foot tape.

Q So if you know there is a permitted location somewhere in the vicinity of the proposed location, you would in the ordinary course measure it with either a wheel or a tape at least since 1986?

A Yes.

Q You wouldn't rely on information on file with respect to the permitted location?

A I try not to use that.

[p. 72] Q Why don't you use it? Why don't you use it?

A In reply to Mr. Bell's comment?

Q Yes.

A To help keep more accurate or attempt to correct the locations and identify for future reference.

Q So there's a possibility that a distance recorded on an application on file may be in error, correct?

A Very possible.

Q Does that happen often?

A I would have no idea. I couldn't account for the other inspectors.

Q In your experience, does it happen often?

A In my personal cases?

Q Yes.

A I try not to let it happen.

Q Well, do you find as a result of measuring in order to establish the distance of a permitted location from a fixed point that the information on file is in error with any frequency?

MR. GERBER: Can I ask for a clarification of that, information submitted by the applicant or information submitted by the department's records?

* * *

[p. 129] A Yes.

Q Is that right?

A Correct.

Q Now, I show you what's been marked R-4 for identification. Can you tell us what this is please?

A It's copies of two permits 1987 and 1988 issued to Wesley Outdoor Advertising.

Q And those two permits were for the construction and maintenance of a sign 300 feet south of Delilah Road Overpass; is that correct?

A Correct.

Q Now, the location I believe you testified to earlier is the Department's legal description; is that correct?

A Correct.

Q And it may not necessarily correspondence [sic] with the actual distance of the sign from some reference point; is that also correct?

A That could be correct, yes.

Q So it could be very close to 300 feet or it could even be 100 or more feet off; is that also correct?

A Correct.

Q That 300 foot figure came from not Mr. Bell, but from the Department's records concerning [p. 130] prior applications or permits; is that correct?

A Correct.

Q Now, did you intend by issuing these permits to allow Mr. Bell to construct a sign 10 feet by 100 feet with a total maximum advertising surface of a total 1,000 square feet?

A Correct.

Q And was that clearly understood in your opinion by Mr. Bell?

A Yes.

Q In fact, Mr. Bell agreed to a limitation on the total advertising area in exchange for certain concessions; did he not?

A That I don't remember.

Q Now, did you intend to issue a permit to construct a sign some 460 feet from the Delilah Road Overpass, not 300 feet from the Delilah Road Overpass as measured by the Department?

MR. GERBER: Could you repeat that question?

Q Did you intend to Mr. Bell by constructing a sign some 460 feet as indicated on Mr. Lloyd's two diagrams from the Delilah Road Overpass and not 300 feet as measured along the right of way?

A Can I put in my own words?

* * *

EXHIBIT M-4

(logo)
State of New Jersey
DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF COASTAL RESOURCES

February 6, 1990

CN 401
Trenton, NJ 08625

PLEASE ADDRESS REPLY TO
2006 ROUTE 37
S & F PLAZA
TOMS RIVER, NJ 08753
(201) 286-6428

Mr. Wesley K. Bell
Wes Outdoor Advertising Company
Box 538
Manahawkin, NJ 08050

RE: Bureau File #0101-89-010, Block 226, Lot 2
Absecon, Atlantic County

Dear Mr. Bell:

This letter is in response to your letter of December 15, 1989 and subsequent letters from your engineer concerning your outdoor sign on the above referenced parcel.

Please be advised that we have again reviewed this file, as well as the data submitted by McSweeney & Drewes. The conclusion of this research supports your position that an outdoor sign existed at this location; that the sign has not been enlarged.

Therefore, the Bureau hereby rescinds the Notice of Violation of N.J.S.A. 13:9A-1 et seq. Thank you for your cooperation in this matter.

Very truly yours,

For Chief, Bureau of Coastal
Enforcement & Field Services

By /s/ John V. Higgins
John V. Higgins
Region III Supervisor

KMC/JVH/ak

cc: Kathleen M. Cann, Bureau Chief
William Norton, NJDOT
U.S. Army Corps of Engineers
U.S. Environmental Protection Agency
Municipal Code Official

State of New Jersey
DEPARTMENT OF TRANSPORTATION
OUTDOOR ADVERTISING

15826
CONTROL NUMBER

I5109
PERMIT NUMBER

1987

NAME AND P.O. BOX OF PERMITTEE
New Outdoor Adv. Co.
Wesley K. Bell
P.O. Box 538
Ramblewood, N.J. 08050

DESCRIPTION OF LICENSED LOCATION
Rt. U.S. 30 M.P. 4.5 S/S W/S 300 ft. S/O
Delilah Rd. Overpass (Rt. 646)
Absecon City Atlantic

NAME CODE	APP NO	CO CODE	M CODE	SQ FT AREA	FEE PAID	NO OF SPACES	TYPE	DATE OF ISSUE
371101	55363	01	01	1000	$125.00	0001	3	03/07/88

State of New Jersey
DEPARTMENT OF TRANSPORTATION
OUTDOOR ADVERTISING

00077
CONTROL NUMBER

12610
PERMIT NUMBER

1988

NAME AND P.O. BOX OF PERMITTEE
New Outdoor Adv. Co.
Wesley K. Bell
P.O. Box 538
Ramblewood, N.J. 08050

DESCRIPTION OF LICENSED LOCATION
Rt. U.S. 30 M.P. 4.5 S/S W/S 300 ft. S/O
Delilah Rd. Overpass (Rt. 646)
Absecon City Atlantic

NAME CODE	APP NO	CO CODE	M CODE	SQ FT AREA	FEE PAID	NO OF SPACES	TYPE	DATE OF ISSUE
371101	55363	01	01	1000	$125.00	0001	3	03/07/88

JOHN C. SINCLAIR *Photographer*

EXHIBIT
R-54

ADVERTISING • COMMERCIAL • PRODUCT • ARCHITECTURAL

725 EAST STATE STREET,
TRENTON, NEW JERSEY 08609
(609) 393-9631

R-54

MT. ROYAL MOTEL

1410-14	N/S WH PIKE, ABT. 400' E/O 6TH AVE., GALLOWAY TWP.	7-5-60
19105-07	" " , ABT. 3/10 MI. E/O RT. #9, ABSECON	7-5-60
19165-10	" " , ABT. 1/4 MI. E/O GARDEN STATE PARKWAY	7-8-60
19111-12	" " " , ABT. 150' W/O 4TH AVE, ABSECON HGTS.	7-8-60
19164-66	N/S ATLANTIC BLVD, ABT. 6/10 MI. W/O BEACH THORO.	7-21-60
19167-69	" " , JUST E/O GREAT THORO.	7-21-60
19170-72	N/S WH PIKE, ABT. 200' W/O CARDIFF CIRCLE	7-21-60
19173-74	N/S ABSECON BLVD, JUST E/O ABSECON AVE, E/O ABSECON	7-22-60
19175-77	S/S WH PIKE, ABT. 750' E/O ENG. CR. RD, POMONA	7-22-60
19220-22	N/S ABSECON BLVD, ABT. 8/10 MI. W/O PELICAN RD.	7-31-60
19223-25	" " " ABT. 3/10 MI. W/O GARRETT DITCH	7-31-60
19352-54	S/S WH PIKE, ABT. 1 9/10 MI. W/O ELWOOD	8-26-60
19386	S/S WH PIKE, ABT. 3/10 MI. W/O RT. #9 ABSECON	9-3-60
19411-12	S/S NEW ROAD, OPP. OCEANVILLE SCHOOL	9-4-60
[illegible]	N/S PITCH BLVD, ABT. 6/10 MI. W/O BEACH THORO.	9-4-60